

14-2491

United States Court of Appeals FOR THE SECOND CIRCUIT

BERTRAM HIRSCH, on behalf of themselves and all others similarly situated,

Plaintiff-Appellee,

IGOR ROMANOV, on behalf of themselves and all others similarly situated,

Plaintiff-Appellee,

v.

CITIBANK, N.A.,

Defendant-Appellant.

*On Appeal From The United States District Court
for the Southern District of New York*

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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BERTRAM HIRSCH and IGOR ROMANOV, on	:	
behalf of themselves and all others similarly situated,	:	
	:	
Plaintiffs,	:	Case No. 12 Civ. 1124 (DAB)
	:	
vs.	:	
	:	
CITIBANK, N.A.,	:	
	:	
Defendant.	:	
-----	X	

**DEFENDANT CITIBANK, N.A.'S DEPOSITION DESIGNATIONS
AND COUNTER-DESIGNATIONS**

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February 14, 2014

APPENDIX OF DEPOSITION TRANSCRIPTS

Document Description	Date	Designations
Deposition Transcript of Michael Ashley	1/6/2014	Defendant's designations and counter-designations in yellow Plaintiffs' designations in green
Deposition Transcript of Bertram Hirsch	1/16/2014	Defendant's designations and counter-designations in yellow Plaintiffs' designations in green
Deposition Transcript of Nancy Lewis	1/7/2014	Defendant's designations and counter-designations in yellow Plaintiffs' designations in green
Deposition Transcript of Igor Romanov	1/9/2014	Defendant's designations and counter-designations in yellow Plaintiffs' designations in green
Deposition Transcript of Vivian Safir	12/19/2013	Defendant's designations and counter-designations in yellow Plaintiffs' designations in green
Deposition Transcript of Jackline Sarraf	1/14/2014	Defendant's counter-designations in yellow Plaintiffs' designations in green
Deposition Transcript of Fazri Zubair	1/9/2014	Defendant's designations and counter-designations in yellow Plaintiffs' designations in green

Dated: New York, New York
 February 14, 2014

Respectfully submitted,

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK -----X BERTRAM HIRSCH AND IGOR ROMANOV, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, Plaintiffs, -against- Civil Action No.: 12 CV 1124 CITIBANK N.A., Defendant. -----X 30 Cutter Mill Road Great Neck, New York January 6, 2014 10:33 a.m. VIDEOTAPED DEPOSITION of CITIBANK N Defendant herein, by MICHAEL ASHLEY, taken by Plaintiffs, pursuant to Federal Rules of Civil Proced Subpoena, held at the above-mentioned time and p Cheryl Robertson, a Notary Public of the State of N	3 FEDERAL STIPULATIONS IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, through their respective counsel, that the certification, sealing and filing of the within examination will be and the same are hereby waived; IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of question, will be reserved to the time of the trial; IT IS FURTHER STIPULATED AND AGREED that the within examination may be signed before any Notary Public with the same force and effect a if signed and sworn to before this court.
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	2 A P P E A R A N C E S: THE LAW OFFICE OF JAMES C. KELLY Attorneys for Plaintiffs 244 5th Avenue, Suite K-278 New York, New York 10001 BY: JAMES C. KELLY, ESQ. SCHOENGOLD & SPORN, P.C. Co-Counsel for Plaintiffs 393 West 49th Street, Suite 5HH New York, New York 10019 BY: SAMUEL P. SPORN, ESQ. STROOCK & STROOCK & LAVAN LLP Attorneys for Defendant 180 Maiden Lane New York, New York 10038 BY: JOSEPH E. STRAUSS, ESQ. ALSO PRESENT: Kevin Gallagher, Videographer Bertram Hirsch	4 M. Ashley THE VIDEOGRAPHER: We are now going on the record at approximately 10:33. This is the beginning of Disk Number 1. My name is Kevin Gallagher, representing Veritext New York, and the date today is January 6th, 2014. The deposition is being held at the Inn at Great Neck located at 30 Cutter Mill Road in Great Neck, New York, and is being taken by the counsel for the plaintiff. The caption reads as Bertram Hirsch and Igor Romanov, et al. versus Citibank North America. This case is filed in the U.S. District Court, Eastern District of New York. The case number is 12CV -- MR. SPORN: Southern District. THE VIDEOGRAPHER: Southern District, sorry.

<p>5</p> <p>1 M. Ashley 2 Southern District of New 3 York. The case number is 4 12CV1124. The name of the witness 5 this morning is Michael Ashley. 6 At this time the attorneys 7 in the room will identify 8 themselves for the record. 9 MR. KELLY: My name is 10 James Kelly. I will be taking the 11 deposition. I am counsel for 12 plaintiffs. 13 MR. SPORN: My name is 14 Samuel P. Sporn of Schoengold & 15 Sporn. I'm co-counsel with 16 Mr. Kelly, attorneys for the 17 plaintiff -- plaintiffs. 18 MR. STRAUSS: Joseph E. 19 Strauss from the law firm of 20 Stroock & Stroock & Lavan on 21 behalf of defendant, Citibank. 22 THE VIDEOGRAPHER: 23 Mr. Kelly, could you put 24 your mic on for me. It's over 25 there (indicating). See it?</p>	<p>7</p> <p>1 M. Ashley 2 me know -- 3 THE WITNESS: Okay. 4 MR. KELLY: -- and we will 5 take a break. 6 Also, during the 7 questioning your attorney -- or 8 Citibank's attorney is going to 9 object -- object a lot to my 10 questions, but you will still 11 answer them, and we will deal with 12 those objections later. 13 MR. STRAUSS: I'm offended, 14 James. 15 MR. KELLY: That's just for 16 the record. So I guess we'll 17 begin. 18 Q Can you state your name and 19 address for the record. 20 A Michael Ashley. I reside at 411 21 North 4th Street, Lindenhurst, New York 11757. 22 Q When did you start working for 23 Citibank? 24 A July -- July 7th of 1985. 25 Q And is that the Great Neck</p>
<p>6</p> <p>1 M. Ashley 2 The court reporter this 3 morning is Cheryl Robertson. She 4 represents Veritext New York also, 5 and she will now swear the witness 6 and we can proceed. 7 MICHAEL ASHLEY, called as a 8 witness, having been duly sworn by a Notary Publ 9 was examined and testified as follows: 10 EXAMINATION BY 11 MR. KELLY: 12 MR. KELLY: Hi, Mr. Ashley. 13 THE WITNESS: Hi. 14 MR. KELLY: My name is 15 James Kelly. I'm plaintiffs' 16 counsel, along with Mr. Sam Sporn 17 here. We'll be taking your 18 deposition. 19 THE WITNESS: Okay. 20 MR. KELLY: We will 21 probably run about 45 to 50 22 minutes of questions; we will take 23 a break, say about ten minutes, 24 and then we will resume. But if 25 you need to take a break, just let</p>	<p>8</p> <p>1 M. Ashley 2 office that you started at? 3 A No. I've worked at many 4 locations throughout my career with Citibank. 5 Q Okay. What was the first 6 location? 7 A 1200 Liberty Avenue in East New 8 York, Brooklyn. 9 Q And then what did you do there? 10 A I started out -- at that time a 11 part-time teller, which was -- was the role 12 where you were guarantee- -- you weren't 13 guaranteed more than 21 hours a week. So I 14 started as a teller part time. 15 And then from that point, six 16 months on, actually worked full time because 17 there was never enough people. So I got -- 18 worked pretty much full time from day one when 19 I started. 20 And then probably January -- 21 January, February of 1986 I became a full-time 22 teller. And from that point I went to various 23 roles in the branch as far as being a teller. 24 I went to become a note teller. You learn 25 different roles. And the note teller -- then</p>

<p style="text-align: right;">9</p> <p>1 M. Ashley</p> <p>2 I had -- handled -- I would sub for being a</p> <p>3 head teller when people were on vacation. You</p> <p>4 would take over the role because, you know,</p> <p>5 you'd have to cover.</p> <p>6 And that -- I worked at that</p> <p>7 branch, like I said, from 1985 to 19-- June</p> <p>8 of 1991, because I got married in August of</p> <p>9 '91. So from that -- but during that</p> <p>10 transition, when I worked in Liberty Avenue,</p> <p>11 we had -- my role was -- I bounce around a</p> <p>12 lot, so -- I have a habit of doing that. It's</p> <p>13 general utility -- general utility clerk it</p> <p>14 was called. So again, I was a teller and I</p> <p>15 did all these various roles.</p> <p>16 So during lunch hours you would</p> <p>17 go out on a platform and you would, you know,</p> <p>18 learn the process. You'd be on the platform,</p> <p>19 validate cards. That's how it was when you --</p> <p>20 you know, you came in in 1985. And again,</p> <p>21 went to -- in 1991 I went to Flatbush and</p> <p>22 Avenue P, Brooklyn.</p> <p>23 And I started -- I was a teller</p> <p>24 there also, but I became a customer service</p> <p>25 rep. So I went for training, customer service</p>	<p style="text-align: right;">11</p> <p>1 M. Ashley</p> <p>2 per -- again, consumer account openings. Plus</p> <p>3 I was able to -- we were versatile -- you</p> <p>4 know, again going through trainings, we -- we</p> <p>5 opened up consumer and we opened up business</p> <p>6 accounts. And that's what my role was there</p> <p>7 for -- from '93 to '96 I worked there doing</p> <p>8 that role, strictly consumer and business</p> <p>9 accounts.</p> <p>10 Then in '96 I got -- I asked for</p> <p>11 a transfer because I moved out to Long Island.</p> <p>12 The commute was a little too far going back</p> <p>13 and forth, so I went to work in the Smithtown</p> <p>14 branch from -- my son was born -- from, again,</p> <p>15 the end of '96. I worked there until 1998 as,</p> <p>16 again, consumer and business accounts,</p> <p>17 customer service. Everything involved in the</p> <p>18 retail branch system.</p> <p>19 And from that point I decided to</p> <p>20 make a change and had to broaden my horizons.</p> <p>21 I learned a lot from Citibank. I went to --</p> <p>22 at that point it was Republic National Bank.</p> <p>23 I went there from '90 -- I'm going by dates</p> <p>24 when my kids were born. '90 -- the beginning</p> <p>25 of -- the end of '98 to 2000 I worked at</p>
<p style="text-align: right;">10</p> <p>1 M. Ashley</p> <p>2 rep, to learn from the customer service rep</p> <p>3 that was outside. And we -- that would be</p> <p>4 various roles of sales. You know,</p> <p>5 conversations when customers come in, if they</p> <p>6 have any problems with their, you know,</p> <p>7 service issues. And I would go back and forth</p> <p>8 from teller to customer service. I did that</p> <p>9 for about, I don't know, six or seven months.</p> <p>10 And then I took on the role</p> <p>11 of -- they transferred me over where -- what</p> <p>12 they called, back then, customer service --</p> <p>13 customer account opening. I don't remember</p> <p>14 the exact title because acronyms changed all</p> <p>15 the time.</p> <p>16 So I -- I opened up personal</p> <p>17 accounts on -- on the platform, and then</p> <p>18 eventually got promoted to assistant manager,</p> <p>19 and basically opened up consumer accounts.</p> <p>20 And that's what I did there for two years.</p> <p>21 And then I transferred to Kings Highway in --</p> <p>22 in Brooklyn on East 15th Street. And that was</p> <p>23 in January of 1993.</p> <p>24 And then from that point I was</p> <p>25 an assistant manager there. I was doing</p>	<p style="text-align: right;">12</p> <p>1 M. Ashley</p> <p>2 Republic National Bank in downtown Brooklyn,</p> <p>3 old Williams- -- the old Williamsburg Savings</p> <p>4 Bank, and got to develop myself being a -- you</p> <p>5 know, I was assistant manager, sales manager,</p> <p>6 for -- for -- you know, on the platform.</p> <p>7 And basically I -- you know, my</p> <p>8 role was consumer accounts, business accounts,</p> <p>9 but going out developing business. And then</p> <p>10 at that point Republic National Bank got</p> <p>11 bought over [sic] by HSBC. Felt I -- I had an</p> <p>12 offer to come back to Citibank. Because at</p> <p>13 that point with my background and my</p> <p>14 experience on the retail side, consumer and</p> <p>15 business, I got the offer to go work in</p> <p>16 Syosset, Long Island, and came in as a</p> <p>17 business banker in that role, because that's</p> <p>18 where -- when I left Republic, came back over.</p> <p>19 And they knew my background,</p> <p>20 where I was cert- -- you know, open up</p> <p>21 consumer, business, the whole nine yards. And</p> <p>22 I worked there from 2000 to 2006. I worked</p> <p>23 there for about six years.</p> <p>24 And then 2007 I got -- the</p> <p>25 manager I worked for there, he transferred.</p>

<p>13</p> <p>1 M. Ashley</p> <p>2 He came over to Great Neck and was -- my</p> <p>3 background in -- did my sales and my numbers</p> <p>4 and said there's an opportunity to come work</p> <p>5 over in Great Neck. And from 2007 until 2010</p> <p>6 I was at Citibank. And now I'm currently at</p> <p>7 Signature Bank.</p> <p>8 Q What -- where -- where -- what</p> <p>9 branch at Signature Bank do you work?</p> <p>10 A Right next door.</p> <p>11 Q What do you do -- what do you do</p> <p>12 there now?</p> <p>13 A Business banking and -- and con-</p> <p>14 -- and consumer. I do both -- both aspects.</p> <p>15 Q When did you actually leave</p> <p>16 Citibank? Did you go to the end of the year</p> <p>17 of 2010?</p> <p>18 A No.</p> <p>19 Q About when?</p> <p>20 A I was -- it was -- actually I</p> <p>21 can remember the day. It was -- it was --</p> <p>22 everything is, like, symbolic. It was</p> <p>23 Election Day. November 3rd I guess it was</p> <p>24 that year.</p> <p>25 Q Can you just state your date of</p>	<p>15</p> <p>1 M. Ashley</p> <p>2 MR. SPORN: Yeah, you can</p> <p>3 answer it.</p> <p>4 MR. STRAUSS: Let's move</p> <p>5 this along, so you can answer.</p> <p>6 A President Street.</p> <p>7 Q Before Citibank, what other</p> <p>8 companies did you work for?</p> <p>9 A I started right out of high</p> <p>10 school. So my background is -- I was --</p> <p>11 actually, I don't need to go into that. I</p> <p>12 started right out of high school.</p> <p>13 Q You started at Citibank right</p> <p>14 out of high school?</p> <p>15 A That was my first job, and I</p> <p>16 worked there for 24 years.</p> <p>17 Q What training did you receive at</p> <p>18 Citibank? Can you go through the different</p> <p>19 training programs that you received throughout</p> <p>20 your years.</p> <p>21 MR. STRAUSS: Objection.</p> <p>22 You want him to go through every</p> <p>23 single training he had? Do you</p> <p>24 want to put a time period on that?</p> <p>25 Q Since you have been there, that</p>
<p>14</p> <p>1 M. Ashley</p> <p>2 birth for the record.</p> <p>3 A [REDACTED]</p> <p>4 Q Can you also state your</p> <p>5 education, beginning with your high school,</p> <p>6 college.</p> <p>7 A My education background is I</p> <p>8 graduated high school. I didn't go to</p> <p>9 college.</p> <p>10 Q Where did you go to high school?</p> <p>11 A Franklin K. Lane.</p> <p>12 Q Is that in Brooklyn?</p> <p>13 A Brooklyn. It's no longer a</p> <p>14 school. They closed down. Very rough school.</p> <p>15 Q Where are you from?</p> <p>16 A Where am I from? I was born in</p> <p>17 downtown Brooklyn.</p> <p>18 Q What street?</p> <p>19 A What street? Let's see.</p> <p>20 That's -- that's important?</p> <p>21 MR. SPORN: No.</p> <p>22 MR. STRAUSS: No.</p> <p>23 THE WITNESS: I mean, is --</p> <p>24 do I need to -- I will answer it,</p> <p>25 but --</p>	<p>16</p> <p>1 M. Ashley</p> <p>2 you can recall.</p> <p>3 MR. STRAUSS: Are you</p> <p>4 asking his -- how long were you at</p> <p>5 Citibank, 24 years?</p> <p>6 THE WITNESS: 24 years.</p> <p>7 MR. KELLY: 23 years?</p> <p>8 THE WITNESS: 1985 to 1996.</p> <p>9 But I came back and worked -- they</p> <p>10 bridged my time. So when I left</p> <p>11 for the two years, it was like I</p> <p>12 never left.</p> <p>13 MR. STRAUSS: So you</p> <p>14 want -- you want him -- I just</p> <p>15 want to get the question. You</p> <p>16 want him to generally describe his</p> <p>17 training over his 24 years at</p> <p>18 Citibank?</p> <p>19 MR. KELLY: Yeah, any</p> <p>20 training programs.</p> <p>21 Q Did you have any training</p> <p>22 programs at --</p> <p>23 A We had many training programs.</p> <p>24 Can I remember every single one? No. And</p> <p>25 when I -- you know, when I came in, I -- like</p>

17

1 M. Ashley
2 I said, I started in 1985. So if -- for me to
3 sit here and chronologically remember every
4 training and every program and everything that
5 has come up to 24 years, I can't -- I can't go
6 back on that. But yes, I have had training,
7 but I -- you know, I don't -- I can break it
8 down as far as, you know -- how much do you
9 want to know? I mean, I went through training
10 through my whole career.
11 Q What would the training be?
12 Would it be an outside program or in-house
13 program?
14 A No, all in-house.
15 Q All in-house?
16 A All in-house programs.
17 Q Okay.
18 A And as far as, you know -- break
19 it down in short is that when I got hired, I
20 had to go through training in the bank. So I
21 was a teller, went to teller functions. And
22 then throughout the years, when I went to
23 those positions, I went to trainings.
24 Customer service.
25 But again, you're talking to a

19

1 M. Ashley
2 training that I went to, but I -- you know, I
3 went through the process. And I was -- you
4 know, I did the job. I was there 24 years. I
5 wasn't there six months. And I'm still in
6 banking doing the same functions.
7 Q What about Mr. Bertram Hirsch
8 here? Do you recall meeting with him?
9 A Cannot recall the day, but I'm
10 very good at remembering faces and having
11 conversations. And as soon as I walked in the
12 room, I knew exactly who he was.
13 Q What do you remember about
14 meeting him?
15 A By face? I know it wasn't the
16 first time in the branch. You definitely were
17 a regular customer at the branch. Seen faces,
18 because Great Neck is very -- a close-knit
19 community, so -- a lot of clients that come
20 in. So I know it wasn't the first time,
21 especially that I can remember his face. And
22 if I opened the initial account opening, I
23 definitely seen him in the branch many times
24 before that.
25 Q Do you remember any specific

18

1 M. Ashley
2 dinosaur here. I started in '85. You work --
3 you work along with people that come in.
4 Anything that's specific (phonetic) --
5 specific, you went to training. And then
6 based on how banks are in the banking world,
7 anybody new coming in -- anything that was
8 retail bank updates, anything critical, you --
9 you would be updated. If there was anything
10 new or technology, software, you were
11 informed.
12 But anybody that came in, you
13 worked along with -- if you went and you came
14 in as a customer service rep -- if I'm already
15 in the bank already, if something changes, if
16 there's anything minute -- pretty much things
17 stay along the same line, so they're not going
18 to send you back for what they're coming in
19 doing if you've been going along the lines.
20 And again, there's always
21 updates, what they could now Brainshark where
22 you go on the computer. And if they, you
23 know, update you any information -- there's
24 always constant updates. But I came in as a
25 teller in '85, so I can't break down every

20

1 M. Ashley
2 discussions that you had with him?
3 A No. Just specific account
4 opening that I would do with any client that
5 walks in the branch, an account opening. You
6 know, going through the process and, you know,
7 what you typically do at an account opening.
8 Q Do you remember doing an account
9 opening with him?
10 A I can't recall three years --
11 you're talking three years ago. I remember
12 his face. I can't remember the specific --
13 you know, that -- the time, no.
14 Q Can you -- okay.
15 Did you have your own office in
16 the Citibank branch --
17 A Yes.
18 Q -- in Great Neck?
19 When you typically meet with
20 clients to open up an account, about how long
21 do you spend with them?
22 A On average, a half-hour to
23 40 minutes. And again, depending on the
24 client, if they -- if they want to sit with me
25 for two hours, I will sit with them for two

<p style="text-align: right;">21</p> <p>1 M. Ashley</p> <p>2 hours. There's no need for it, but always, to</p> <p>3 get to know the client, especially at an</p> <p>4 account opening -- it depends on their</p> <p>5 situation. And a lot of times customers are</p> <p>6 like, get me in; get me out. I just want to</p> <p>7 open up my account.</p> <p>8 I -- I -- I will follow up -- I</p> <p>9 would initially follow up or set up an</p> <p>10 appointment if they want to come back. And</p> <p>11 they -- I would make myself available, give</p> <p>12 them my business card with -- even with my</p> <p>13 cell number if they needed to reach me.</p> <p>14 I always made myself accessible</p> <p>15 because, you know, on the outside, if they</p> <p>16 need something, that's -- that's what I'm</p> <p>17 about. That's what I've always been about.</p> <p>18 Q Do you have any professional</p> <p>19 licenses or --</p> <p>20 A Yes, I do.</p> <p>21 Q What's that?</p> <p>22 A I have --</p> <p>23 THE WITNESS: Is that okay</p> <p>24 to answer that?</p> <p>25 MR. STRAUSS: Sure.</p>	<p style="text-align: right;">23</p> <p>1 M. Ashley</p> <p>2 able to have discussions, but to a limit. You</p> <p>3 had licenses, but you had investment persons</p> <p>4 in the branch. And the branch managers are</p> <p>5 the administration -- the administrators.</p> <p>6 We couldn't sell the products.</p> <p>7 The life and health, we could. We could do</p> <p>8 review and -- but -- even though I had the</p> <p>9 licenses, I did very little -- I -- I had to</p> <p>10 have the licenses, but I did -- I didn't do</p> <p>11 any -- I did no sales in life and health while</p> <p>12 I was there. I did maybe one or two policies,</p> <p>13 because I didn't come in as a life and health</p> <p>14 insurance person. I'm a banker. But I -- I</p> <p>15 learned it. I know how to do it, but it</p> <p>16 wasn't my role. I didn't -- I didn't sign up</p> <p>17 for that. But I came in and -- and that's --</p> <p>18 I had -- and I had the licenses. And then --</p> <p>19 and that's -- and that's -- that's -- that's</p> <p>20 what I have.</p> <p>21 Q And what type of training or</p> <p>22 tests do you have to do to get that license?</p> <p>23 A To get that license you had to</p> <p>24 go -- you got sent for training to SEC</p> <p>25 training. And they had internal training at</p>
<p style="text-align: right;">22</p> <p>1 M. Ashley</p> <p>2 A Okay. I'm all new -- this is a</p> <p>3 whole new thing to me.</p> <p>4 I have health and life -- life</p> <p>5 and health insurance license, and I have a</p> <p>6 Series 6, which is probably gonna be done now,</p> <p>7 because I have been at Signature now</p> <p>8 16 months. And they -- you lose -- you -- the</p> <p>9 bank doesn't hold licenses, so I won't have</p> <p>10 that. Life and health I can keep, which I</p> <p>11 want to keep, that I worked very hard for</p> <p>12 taking those tests. But the Series 6,</p> <p>13 that'll -- that will not be -- I wouldn't even</p> <p>14 know if you lose that, but I do have that.</p> <p>15 Q What is a life and health</p> <p>16 insurance license? Can you explain what that</p> <p>17 is.</p> <p>18 A You're able to sell life and</p> <p>19 health insurance. And again, when working for</p> <p>20 the bank, we were required to go and have</p> <p>21 licenses to -- to be -- you know, to work --</p> <p>22 to have -- to be on the platform, because that</p> <p>23 was that whole time frame where per- --</p> <p>24 personal bankers, commercial bankers, you had</p> <p>25 to have it so if -- you were accessible to be</p>	<p style="text-align: right;">24</p> <p>1 M. Ashley</p> <p>2 Citibank for that. But I don't know -- is</p> <p>3 that even relevant? I don't know.</p> <p>4 Yeah, so I went to training.</p> <p>5 And I had to go for -- at that time -- life</p> <p>6 and health you could study for out of the</p> <p>7 manuals, and then you went for like a</p> <p>8 three-day -- again, I don't remember how long.</p> <p>9 It could have been a week.</p> <p>10 The Series 6 you had to study.</p> <p>11 You know, some people could study for it 24</p> <p>12 hours. It's -- you know, it depends on how</p> <p>13 you, you know, take a test. But it was --</p> <p>14 that was like a three-week process for the</p> <p>15 Series 6.</p> <p>16 And you had -- you were sent for</p> <p>17 training. The bank hired outside people to</p> <p>18 come in and train from the -- the securities</p> <p>19 and training -- securities training and the</p> <p>20 SEC commission. However, again, I don't</p> <p>21 remember all -- everything.</p> <p>22 Q And what does the Series 6 allow</p> <p>23 you to do?</p> <p>24 A That deals with annuities,</p> <p>25 mutual funds. A minimal. It's not much. You</p>

<p style="text-align: right;">25</p> <p>1 M. Ashley</p> <p>2 know, a Series 7 is where you get more</p> <p>3 involved. And again, we had the licenses, but</p> <p>4 we were not allowed to solicit or sell. We --</p> <p>5 if you came in -- if Mr. Bertram came in and</p> <p>6 sat with me in -- in a sales conversation,</p> <p>7 that would be brought up, too. Because if</p> <p>8 you're profiling -- you go through the whole</p> <p>9 process. If you have any interest, we have</p> <p>10 investment persons on site. You know, if you</p> <p>11 have CDs, savings accounts; if you're looking</p> <p>12 to, you know, build on your -- your -- your</p> <p>13 savings, we have opportunities. And you have</p> <p>14 to specify that it's not insured by the bank,</p> <p>15 it's FDIC insured by the investment division</p> <p>16 of the bank.</p> <p>17 And if they decided they wanted</p> <p>18 to, I would set up an appointment for them,</p> <p>19 but no solicitation, even though I had the</p> <p>20 licenses, I had my disclosures on my desk and</p> <p>21 all that stuff.</p> <p>22 Q Do you recall ever having a</p> <p>23 client come to you with a promotional offer to</p> <p>24 open a savings or checking account?</p> <p>25 A Of course. That -- that happens</p>	<p style="text-align: right;">27</p> <p>1 M. Ashley</p> <p>2 they have any mailers come in versus someone</p> <p>3 that don't have, that's an invitation that was</p> <p>4 sent to them, so that's what we have to go on.</p> <p>5 And that's when I would explain, well, if</p> <p>6 you're opening an account, you have to do</p> <p>7 this, this and this.</p> <p>8 And then if there was any</p> <p>9 extended offer to get additional -- you know,</p> <p>10 like your banking, if you deposit money, you</p> <p>11 get X amount of dollars over a certain time.</p> <p>12 And then if you follow that, after six months</p> <p>13 you'll get this.</p> <p>14 And again, it's what they bring</p> <p>15 to the table when they come to me. And again,</p> <p>16 I'm seasoned to know how to do my sales</p> <p>17 process. And -- but as far as entering</p> <p>18 software, everything is the same. It's just a</p> <p>19 matter of knowing and being aware of your</p> <p>20 campaigns and everything.</p> <p>21 Q When they run these promotional</p> <p>22 offers, do you get a lot of customers that</p> <p>23 come in sometimes?</p> <p>24 A They come in. I mean, again, I</p> <p>25 can't remember how many people walked in,</p>
<p style="text-align: right;">26</p> <p>1 M. Ashley</p> <p>2 all the time, because there's always</p> <p>3 promotions going on. Always. And customers</p> <p>4 will walk in. And -- and -- and typically</p> <p>5 in -- in -- it's in all areas, but definitely</p> <p>6 in certain areas I have learned in my career</p> <p>7 where campaigns are very big, and customers</p> <p>8 come in with their walk-in invitations. Oh,</p> <p>9 if I open up this account, I get this and I</p> <p>10 get this. And if I do that, you know, I want</p> <p>11 the perks. And that's definitely typica- --</p> <p>12 definitely typical of this geographical area.</p> <p>13 Q Is the account-opening process</p> <p>14 the same if they have a promotional offer as</p> <p>15 if they do not have a promotional offer?</p> <p>16 A Can you repeat that again.</p> <p>17 Q Is the account-opening process</p> <p>18 the same --</p> <p>19 A As far as following protocol,</p> <p>20 like procedures and --</p> <p>21 Q Yes.</p> <p>22 A Of course. Everything's the</p> <p>23 same. Everything's the same. As far as</p> <p>24 account opening, entering information in the</p> <p>25 system, nothing changes. What changes is if</p>	<p style="text-align: right;">28</p> <p>1 M. Ashley</p> <p>2 but -- and what campaign you're talking about,</p> <p>3 you know. And I -- I -- any campaign, people</p> <p>4 come in, but -- I can't recall how many, but</p> <p>5 they come in. You know, depends on the mass</p> <p>6 mailing, what goes out and who -- who, you</p> <p>7 know, finds it of interest and wants to gain</p> <p>8 those perks that they offer.</p> <p>9 Q Are you -- are you ever notified</p> <p>10 from your supervisors or superiors that we</p> <p>11 have an offer going out, we're going to</p> <p>12 probably have X amount of customers coming in?</p> <p>13 A Yes. That even comes out in</p> <p>14 what they call a retail update.</p> <p>15 Q Do you --</p> <p>16 A They'll -- they'll send you a</p> <p>17 sample of it. You know, this is what's going</p> <p>18 on, and this is -- you know, be pre- -- you</p> <p>19 know, be aware of what's going on.</p> <p>20 Q Do you do anything in</p> <p>21 preparation if you believe that you're going</p> <p>22 to have an influx of a --</p> <p>23 A No, there's no -- it's -- it's</p> <p>24 meat and potatoes. It's not anything complex,</p> <p>25 you know. You know, campaigns -- I mean, the</p>

<p style="text-align: right;">29</p> <p>1 M. Ashley</p> <p>2 ones that I can remember, a Citigold campaign;</p> <p>3 if you deposit so much money, you will get</p> <p>4 \$200. Points, thank you points. You know,</p> <p>5 you will get X amount of thank you points.</p> <p>6 20,000 points if you put \$25,000 in for 90</p> <p>7 days. And then if you stay another -- you do</p> <p>8 electronic bill payment -- there's a lot of</p> <p>9 things involved. If you did this, you got</p> <p>10 this. If you did three bill payments, if you</p> <p>11 did three debits. And that was all laid out.</p> <p>12 And that's what we needed to know.</p> <p>13 And basically that would be laid</p> <p>14 out on the disclosure card that's sent in the</p> <p>15 invitation offer. All the rules and the</p> <p>16 disclosures are clearly printed on the -- the</p> <p>17 offer.</p> <p>18 Q Okay. I think we're going to</p> <p>19 start introducing some documents now. Okay,</p> <p>20 the first document is going to be an exhibit</p> <p>21 that's been previously marked. This is an</p> <p>22 exhibit previously marked as Plaintiffs'</p> <p>23 Exhibit 4, Bates Number Citi-000079 through</p> <p>24 Citi-000080. The document is entitled</p> <p>25 "Concierge Daily Transaction Transmittal</p>	<p style="text-align: right;">31</p> <p>1 M. Ashley</p> <p>2 A Yes.</p> <p>3 Q What does "CFA" mean?</p> <p>4 A Certified financial analyst.</p> <p>5 Q Certified financial analyst.</p> <p>6 Are you a certified financial</p> <p>7 analyst?</p> <p>8 A At that point, what they had</p> <p>9 under the title, certified financial analyst,</p> <p>10 PB. So that's -- that's where -- on the</p> <p>11 title -- that's what -- where our titles were.</p> <p>12 As far as the title -- again, acronyms, how</p> <p>13 the bank changes titles, CitiBusiness</p> <p>14 commercial, but we all -- even if you walked</p> <p>15 in there now, they're known as CFAs. Because</p> <p>16 when you have a license, you have to be stated</p> <p>17 as a financial analyst because you have</p> <p>18 licenses.</p> <p>19 Q Did you have a certified</p> <p>20 financial analyst license?</p> <p>21 A I don't know how to answer that.</p> <p>22 I'm -- I'm -- I don't know how to answer that.</p> <p>23 Q Do you know what a certified</p> <p>24 financial analyst is?</p> <p>25 A Yeah, well, it's finance -- it's</p>
<p style="text-align: right;">30</p> <p>1 M. Ashley</p> <p>2 Report." Okay. Can you just review this</p> <p>3 document.</p> <p>4 A Sure.</p> <p>5 (Perusing document.)</p> <p>6 MR. SPORN: Off the record.</p> <p>7 THE VIDEOGRAPHER: We're</p> <p>8 off the record now at 11:03.</p> <p>9 (Discussion held off the</p> <p>10 record.)</p> <p>11 (Plaintiffs' Exhibit</p> <p>12 9-Document Bates Stamped</p> <p>13 Citi-000079 through Citi-000080,</p> <p>14 was marked for identification as</p> <p>15 of this date.)</p> <p>16 THE VIDEOGRAPHER: We're</p> <p>17 now back on the record at</p> <p>18 11:04 a.m.</p> <p>19 Q The document that was previously</p> <p>20 marked as Exhibit 4, we're going to mark it as</p> <p>21 Plaintiffs' Exhibit 9 for this deposition.</p> <p>22 And can you just review the document.</p> <p>23 A I already did.</p> <p>24 Q Okay. Do you see where it says</p> <p>25 "CFA" on the top next to your name?</p>	<p style="text-align: right;">32</p> <p>1 M. Ashley</p> <p>2 certified -- I'm certified because I have</p> <p>3 stockbroker licenses and I have life and</p> <p>4 health. That's why, you know -- an analyst to</p> <p>5 sit down and -- again, my licenses, and to</p> <p>6 uncover, but only to an extent, and then it's</p> <p>7 handed off.</p> <p>8 Q So this is --</p> <p>9 A I'm not a certified financial</p> <p>10 planner. I don't, you know -- that's the</p> <p>11 title role that the bank assigned me.</p> <p>12 Q So that -- that's not a</p> <p>13 certified financial analyst as people would</p> <p>14 normally know it as, you know, where you have</p> <p>15 to get licensed and you have to take a test?</p> <p>16 It's a separate thing from that?</p> <p>17 A The customers know that, the</p> <p>18 clients know that when you sit down and you're</p> <p>19 there and you open up accounts.</p> <p>20 Q They know what?</p> <p>21 A I don't know, I -- I can't -- I</p> <p>22 don't know how to answer that. I don't know</p> <p>23 where we're going into here with this.</p> <p>24 MR. STRAUSS: I'm not sure</p> <p>25 he understands it.</p>

<p>33</p> <p>1 M. Ashley 2 THE WITNESS: I don't 3 understand. 4 MR. STRAUSS: Maybe you 5 just want to ask a different 6 question. I'm not sure he 7 understands your question. 8 Q Well, there's a term -- there's 9 a term, outside of Citibank, that's very 10 common that's -- 11 A That's what the title was on the 12 application on my title in the branch. I 13 can't answer that. That's what was given to 14 me. That's what Citibank assigned me. That's 15 all I can answer to. Plain and simple. 16 That's -- I didn't assign that, that's the 17 title they -- that was -- that goes under the 18 profile when you open up an account. 19 Q But you never took a test to 20 become a certified financial analyst? 21 A No. 22 Q You see where it says "CFE -- 23 "CFAP," and then the little number symbol? 24 A Yeah, "P" -- yeah. 25 Q Do you know what numb -- what</p>	<p>35</p> <p>1 M. Ashley 2 that? Oh, okay. 3 Q Okay, if you could go to the 4 next page. 5 Do you recall having discussions 6 with Mr. Hirsch about his job? 7 A Yes, because we -- when we open 8 up an account and we enter it on the computer, 9 when we're opening it, the account is entered, 10 we ask, "Are you currently working?" 11 The answer to me, "I'm currently 12 retired," that's what I enter. 13 Q Did you know what Mr. Hirsch did 14 for a living? 15 A No, I can't remember that. 16 That's three years ago. If I could remember 17 everything, then I should, you know, win 18 lotto. I don't mean to be sarcastic, but I 19 can't remember three years ago what he did for 20 a living. 21 Q All right. 22 Could you just go to the second 23 page here. And this -- do you know what this 24 document is? 25 A This document is a signature</p>
<p>34</p> <p>1 M. Ashley 2 that number is? 3 A That's my identification number. 4 Q That's for you? 5 A Yes, to identify me. 6 Q Okay. 7 Now, looking at this document, 8 does this refresh your memory at all with the 9 opening of the account of Bertram Hirsch? 10 A Again, it's three years ago. I 11 can't answer that; but it's typically, on any 12 customer or client that would walk in, this is 13 what the form would look like for me. So it 14 could be you, him, anybody in this room that 15 it would always come back to me in my memory. 16 Because as far as knowing to him, his name is 17 on it. Mr. Bertram is on there on the 18 application, but this is standard printouts 19 that you see every day when you open up an 20 account and was concierge. 21 Q Where it says "Employment" over 22 there, "Retired," do you know what that means? 23 A He's retired and he doesn't work 24 anymore. 25 MR. STRAUSS: Where is</p>	<p>36</p> <p>1 M. Ashley 2 card. 3 Q Is this what every customer 4 signs when they open an account? 5 A Yes. 6 Q Do you explain to the customer 7 what the signature card is? 8 A Most certainly. 9 Q What -- 10 A This -- 11 Q -- do you say it is? 12 MR. STRAUSS: Let's not 13 talk over each other. Wait for 14 him to ask his question -- 15 THE WITNESS: I'm sorry. 16 MR. STRAUSS: -- for 17 everybody's sake. 18 THE WITNESS: Okay. 19 Q What do you tell the customer it 20 is? 21 A Well, after they go through 22 opening the account and this prints out, I 23 take the card. And if you were sitting in 24 front of me, I would reiterate, "This is your 25 name. Is it spelled right?" The correction.</p>

<p style="text-align: right;">37</p> <p>1 M. Ashley</p> <p>2 Social Security number. Would let them know</p> <p>3 I'm linking whatever accounts are linked,</p> <p>4 which on that day was a checking and savings</p> <p>5 account. And I would say to Mr. Hirsch, "If</p> <p>6 you're in agreement, sign the card."</p> <p>7 And then also go over what it</p> <p>8 says in the disclosure. Because on the cards,</p> <p>9 which protects me and the client, when I go</p> <p>10 over everything in the sales conversation and</p> <p>11 they initial, the whole process of leading up</p> <p>12 to the final steps of account opening and</p> <p>13 going through the whole thing, whether it's a</p> <p>14 campaign -- this card that's designed by the</p> <p>15 bank or to protect the client and the bank and</p> <p>16 myself, "By signing below, I certify my tax</p> <p>17 status under any penalties and subject to</p> <p>18 backup withholding," I disclose this section.</p> <p>19 And by signing that, they're in</p> <p>20 agreement with that. If they weren't, they</p> <p>21 wouldn't sign the card. Or if there's</p> <p>22 anything that they didn't -- weren't sure of,</p> <p>23 then we would go over that.</p> <p>24 Q Has there ever been a time where</p> <p>25 a customer never signed the signature card?</p>	<p style="text-align: right;">39</p> <p>1 M. Ashley</p> <p>2 that we have, you know, from checking to</p> <p>3 savings to overdraft protection, bounce</p> <p>4 protection, CDs, any current rates that are</p> <p>5 out there, promotions that we have that are</p> <p>6 internal promotions if -- that we can give to</p> <p>7 if -- for existing.</p> <p>8 And if you're new or you come</p> <p>9 in, or even existing that comes in with a mail</p> <p>10 offer and they present me with -- after I go</p> <p>11 through that, you know, sit -- first I would</p> <p>12 sit down and get to know the client and talk</p> <p>13 to them. You know, have the initial</p> <p>14 conversation; open up the dialogue and make</p> <p>15 sure -- you know, we get comfortable with each</p> <p>16 other, get to know each other. And then I</p> <p>17 would just go through the process.</p> <p>18 It's checking and savings. It's</p> <p>19 not -- you're not doing a mortgage, you're</p> <p>20 not -- you're opening up a basic checking and</p> <p>21 savings account, entering basic information in</p> <p>22 the system. And basically the whole</p> <p>23 conversation is getting to know your client</p> <p>24 and -- and just opening the account, you know.</p> <p>25 And again, that's plain and simple, you know.</p>
<p style="text-align: right;">38</p> <p>1 M. Ashley</p> <p>2 A Never. Not -- not on my -- you</p> <p>3 know, I can't talk for -- on my part, if</p> <p>4 you're asking me, my accounts are dual</p> <p>5 controlled. They're signed off at the</p> <p>6 manager. It's signed off and it's verified.</p> <p>7 So if you don't have a card, you know, it's</p> <p>8 verified and IDs are taken.</p> <p>9 Q Can you go -- can you discuss</p> <p>10 and state the process that occurs when one</p> <p>11 opens up a Citibank checking or savings</p> <p>12 account, exactly what -- what your process is.</p> <p>13 A My process? Okay. My process</p> <p>14 is if you walk in, you're coming in to see</p> <p>15 me -- you want from the initial account</p> <p>16 opening? You want the whole --</p> <p>17 Q Yeah.</p> <p>18 A You would come in. I would sit</p> <p>19 down and stand up. I would introduce myself</p> <p>20 to you. "What brings you to the bank today?"</p> <p>21 So and so. The customer would -- you would</p> <p>22 say, "I want to open up" -- "I'm interested in</p> <p>23 opening up a checking or a savings account."</p> <p>24 And then I would go through the</p> <p>25 process of discussing the different products</p>	<p style="text-align: right;">40</p> <p>1 M. Ashley</p> <p>2 And then -- and then building on</p> <p>3 the relationship as time goes on. Again, if</p> <p>4 the client chooses to, you know. My clients,</p> <p>5 I can go and they have me in their office -- I</p> <p>6 will stay there for hours. I go in, I sit</p> <p>7 with my clients.</p> <p>8 It's up to the client, their --</p> <p>9 what they're about, if they want to spend</p> <p>10 time -- a lot of times customers come, "You</p> <p>11 know what, I gotta go. I got everything. You</p> <p>12 explained everything. If I need anything,</p> <p>13 I'll get back to you." And that's how the</p> <p>14 process goes. To the next customer.</p> <p>15 And then you develop your -- I</p> <p>16 develop my relationships with the clients. So</p> <p>17 it -- it's -- the sales process would just be</p> <p>18 going through how the checking account works,</p> <p>19 the savings account. If they opened up a</p> <p>20 money market, you can only do -- write six</p> <p>21 checks a month.</p> <p>22 Like you come in, "I want to</p> <p>23 open a checking, a savings, a money market," I</p> <p>24 would automatically -- specifically like a</p> <p>25 money market. "You know, you can" -- you're</p>

<p style="text-align: right;">41</p> <p>1 M. Ashley</p> <p>2 only enabled to write six checks a month out</p> <p>3 of the account, because then you would be in</p> <p>4 violation of over-exceeding a money market.</p> <p>5 That's why you would establish a checking</p> <p>6 account so you could transfer money from your</p> <p>7 money market to your checking and be able to</p> <p>8 write out as many checks as you like.</p> <p>9 If you come into a branch, you</p> <p>10 can make a withdrawal, as many as you like.</p> <p>11 It's a savings account. A savings account --</p> <p>12 that's why you would open different accounts.</p> <p>13 You open up a checking, a savings. There's</p> <p>14 different proponents to what you're opening up</p> <p>15 for different needs. A CD. And that's --</p> <p>16 again, you're talking three years ago. We</p> <p>17 just go through the product. The product --</p> <p>18 what's available to the client at that point.</p> <p>19 So I don't -- you know, I don't know.</p> <p>20 Q With respect to the signature</p> <p>21 card and -- and all the other documents that</p> <p>22 are provided to the client, can you go with --</p> <p>23 can you go through those steps.</p> <p>24 MR. STRAUSS: Objection to</p> <p>25 form.</p>	<p style="text-align: right;">43</p> <p>1 M. Ashley</p> <p>2 they don't have the Citi card, they can bring</p> <p>3 it up on the screen.</p> <p>4 But this -- this is the only</p> <p>5 thing at the end of the sales opening is -- a</p> <p>6 printout of this, and a hard copy of the</p> <p>7 signature card, which we insert into the</p> <p>8 printer and it prints out.</p> <p>9 Q What other documents are</p> <p>10 provided to --</p> <p>11 A Well, at the --</p> <p>12 THE COURT REPORTER: Wait,</p> <p>13 hold on. Hold on. Let him finish</p> <p>14 the question.</p> <p>15 MR. STRAUSS: Let him</p> <p>16 finish the question first.</p> <p>17 THE WITNESS: Oh, I'm</p> <p>18 sorry. I'm new to this. I've</p> <p>19 never been --</p> <p>20 MR. STRAUSS: It's hard --</p> <p>21 it's difficult for the reporter --</p> <p>22 THE WITNESS: All right,</p> <p>23 I'm probably --</p> <p>24 MR. STRAUSS: -- to catch</p> <p>25 everything.</p>
<p style="text-align: right;">42</p> <p>1 M. Ashley</p> <p>2 Q Like when is a signature card</p> <p>3 provided, when are the other documents</p> <p>4 provided? What -- what documents are provided</p> <p>5 when they open up a checking or a savings</p> <p>6 account?</p> <p>7 MR. STRAUSS: I think he's</p> <p>8 asking specifically as to the</p> <p>9 signature card, and then perhaps</p> <p>10 he can ask you about other</p> <p>11 documents as well. But just to</p> <p>12 break that down so you understand</p> <p>13 that.</p> <p>14 A What other documents -- this --</p> <p>15 MR. STRAUSS: The signature</p> <p>16 card.</p> <p>17 A This would be the only document</p> <p>18 that's signed at the end of the sales. This</p> <p>19 is all that's -- after we open the account,</p> <p>20 this is my form. I take this. This is signed</p> <p>21 and it gets attached (indicating). That's all</p> <p>22 that becomes of the sales process as far as</p> <p>23 the application. The card gets microfilmed,</p> <p>24 sent out for -- for imaging so when they go to</p> <p>25 the teller, they can verify to -- you know, if</p>	<p style="text-align: right;">44</p> <p>1 M. Ashley</p> <p>2 THE WITNESS: All right.</p> <p>3 All right. It's -- it's a whole</p> <p>4 new thing to me, so I'm not used</p> <p>5 to this.</p> <p>6 MR. KELLY: I just want to</p> <p>7 state for the record that</p> <p>8 Citi-0000079 and Citi-0000080 are</p> <p>9 the only documents that are signed</p> <p>10 by the client.</p> <p>11 Q One other --</p> <p>12 MR. SPORN: Is that true?</p> <p>13 THE WITNESS: What's in</p> <p>14 front -- right now? Yes, right</p> <p>15 here (indicating).</p> <p>16 Q That's true?</p> <p>17 A This document here (indicating).</p> <p>18 Q What other documents are</p> <p>19 provided to the customer when they open a</p> <p>20 savings or a checking account?</p> <p>21 A Well, after this document is</p> <p>22 done, when I'm finished, we go over any</p> <p>23 general questions. I have -- all our kits are</p> <p>24 set up, our welcome kits. So what they get</p> <p>25 when they leave is there's the personal</p>

<p style="text-align: right;">45</p> <p>1 M. Ashley</p> <p>2 disclosure and the client manual. And</p> <p>3 that's -- all that and any general literature</p> <p>4 that's pertaining to the account, especially a</p> <p>5 mail offer, is -- that's all inserted. And</p> <p>6 that's -- at the account opening is handed to</p> <p>7 the customer with my business card. And</p> <p>8 that's what's inside the welcome kit, along</p> <p>9 with -- especially in a situation with the</p> <p>10 checkbook, the starter checks, it's inserted</p> <p>11 and make it clear in the conversation, "Here's</p> <p>12 the welcome kit. It contains the disclosure,</p> <p>13 the manual."</p> <p>14 And then we reiterate [sic]</p> <p>15 that -- with the signature card, disclosure is</p> <p>16 in here. And in the manual does outline</p> <p>17 your -- what you have in the booklet to follow</p> <p>18 along with if you have any if -- any</p> <p>19 questions. And then I hand them the welcome</p> <p>20 kit and it has the disclosure, the manual and</p> <p>21 a checkbook.</p> <p>22 MR. STRAUSS: Maybe we want</p> <p>23 to take a --</p> <p>24 THE WITNESS: Can we take a</p> <p>25 break?</p>	<p style="text-align: right;">47</p> <p>1 M. Ashley</p> <p>2 checkbook.</p> <p>3 Q Do -- do all the customers get a</p> <p>4 checkbook when they open up an account?</p> <p>5 A I can't recollect; but no, if</p> <p>6 it's -- again, if it was -- I -- at that point</p> <p>7 a campaign where they get the first 200 checks</p> <p>8 for free, which that -- on campaigns they</p> <p>9 would get the checks.</p> <p>10 And based on looking at the</p> <p>11 application, AAdvantage blue card, it must</p> <p>12 have been a campaign. So it had to be tied in</p> <p>13 where you -- if I'm -- from what I can</p> <p>14 remember on a promotion, the first 200 checks</p> <p>15 are free.</p> <p>16 Q Have you ever had it where a</p> <p>17 customer declined any checks?</p> <p>18 MR. STRAUSS: Objection.</p> <p>19 You can still answer if you want.</p> <p>20 A If they request not to? Yeah,</p> <p>21 exactly.</p> <p>22 Q And you don't give them the</p> <p>23 checks then?</p> <p>24 A If they tell me not to.</p> <p>25 Q And a couple more lines below it</p>
<p style="text-align: right;">46</p> <p>1 M. Ashley</p> <p>2 MR. STRAUSS: -- break. We</p> <p>3 have been going for about 45</p> <p>4 minutes.</p> <p>5 MR. KELLY: Yeah, we can</p> <p>6 take a break.</p> <p>7 THE VIDEOGRAPHER: We're</p> <p>8 now going off the record at</p> <p>9 approximately 11:18 a.m.</p> <p>10 (Recess was taken.)</p> <p>11 THE VIDEOGRAPHER: We are</p> <p>12 now going back on the record at</p> <p>13 approximately 11:30 a.m.</p> <p>14 Q Mr. Ashley, can you just take a</p> <p>15 look at this document, 79, the first page</p> <p>16 right there.</p> <p>17 A Okay.</p> <p>18 Q You see where it says "Checkbook</p> <p>19 order. YNNN checkbook order"? It's after the</p> <p>20 first line on the right-hand side.</p> <p>21 A Yeah.</p> <p>22 Q Do you know what that means,</p> <p>23 checkbook order fee?</p> <p>24 A That's -- particularly at that</p> <p>25 time it means he wasn't charged for the</p>	<p style="text-align: right;">48</p> <p>1 M. Ashley</p> <p>2 says, "Card printed, blue debit." What does</p> <p>3 that mean? Do you know?</p> <p>4 A Well, there's different cards.</p> <p>5 The blue card, the blue AAdvantage. Again,</p> <p>6 I'm trying to remember from the promotions.</p> <p>7 There's different cards. But the blue</p> <p>8 AAdvantage, looking at this application, is --</p> <p>9 when you open up the account, you earn a</p> <p>10 certain -- you earn -- again, I can't remember</p> <p>11 everything three years ago.</p> <p>12 But if I can remember, it's for</p> <p>13 every dollar -- they had different promotions.</p> <p>14 If you had one card, it would be for every --</p> <p>15 for every dollar spent, you got one mile. If</p> <p>16 you got a different AAdvantage, for every two</p> <p>17 dollars, you got a mileage. Again, different</p> <p>18 promotions.</p> <p>19 But this card was specifically</p> <p>20 set up like a regular debit card, only it's</p> <p>21 for air miles. So when you're using your card</p> <p>22 and make your purchases, you're -- you're</p> <p>23 getting -- you're getting miles.</p> <p>24 Q Have you ever had it where a</p> <p>25 customer had this promotional offer where they</p>

<p style="text-align: right;">49</p> <p>1 M. Ashley</p> <p>2 would get a debit card but they declined a</p> <p>3 debit card?</p> <p>4 A They declined the debit card? I</p> <p>5 can't recall.</p> <p>6 Q You said that when a client</p> <p>7 opens an account, you sit down with them and</p> <p>8 get to know them. You don't recall sitting</p> <p>9 down with Mr. Hirsch and getting to know him?</p> <p>10 A At the account opening, no.</p> <p>11 Q You don't recall him telling you</p> <p>12 he was a retired lawyer?</p> <p>13 A Again, I -- going back on it --</p> <p>14 you're talking three years ago, I -- I don't</p> <p>15 remember.</p> <p>16 MR. KELLY: I would like to</p> <p>17 introduce as Citi Bates Number</p> <p>18 Citi-0000133 through Citi-0000139.</p> <p>19 The document is titled Citibank</p> <p>20 National Form Center.</p> <p>21 (Plaintiffs' Exhibit</p> <p>22 10-Citibank National Form Center,</p> <p>23 was marked for identification as</p> <p>24 of this date.)</p> <p>25 Q Can you just take a look through</p>	<p style="text-align: right;">51</p> <p>1 M. Ashley</p> <p>2 is a printout. As far as supplying</p> <p>3 information -- I -- I don't understand.</p> <p>4 MR. STRAUSS: Yeah, it's --</p> <p>5 I'll object. It's kind of a vague</p> <p>6 question, James. What are you</p> <p>7 asking him there?</p> <p>8 Q On the second bullet there it</p> <p>9 says, "Do not open an account for an applicant</p> <p>10 that will not supply required information,</p> <p>11 cannot supply required information, supplies</p> <p>12 false account or personal information."</p> <p>13 Do you recall whether or not</p> <p>14 Hirsch supplied any false account or personal</p> <p>15 information?</p> <p>16 A When you're opening an account</p> <p>17 and you're supplying information as far as</p> <p>18 what I enter in the system, again, Social</p> <p>19 Security number, ChexSystems and verifying the</p> <p>20 client, that's what comes up on the system.</p> <p>21 If he lies to me or submits any information, I</p> <p>22 wouldn't know that. I'm going by the ID</p> <p>23 that's supplied to me, his Social Security</p> <p>24 number. And what comes out on the system is</p> <p>25 what we call ChexSystems and OFAC.</p>
<p style="text-align: right;">50</p> <p>1 M. Ashley</p> <p>2 this document.</p> <p>3 A (Perusing document.)</p> <p>4 Q Do you recognize this document?</p> <p>5 A All I recognize, National</p> <p>6 Forms -- if you had to go in and -- I'm</p> <p>7 familiar with the National Form Center, but I</p> <p>8 don't -- I don't remember this particular</p> <p>9 disclosure, the introduction.</p> <p>10 Q If you could take a look at</p> <p>11 Page 135, it says at the top, "Customer</p> <p>12 account opening, stage one" --</p> <p>13 A Right.</p> <p>14 Q -- "introduction."</p> <p>15 A Right.</p> <p>16 Q And it says here, "Important</p> <p>17 information." That's the second line.</p> <p>18 "Consider consumer fairness throughout the</p> <p>19 account-opening process, affording appropriate</p> <p>20 treatment to our customers throughout this</p> <p>21 process and the entire product life cycle."</p> <p>22 Did you do that when customers</p> <p>23 opened the account?</p> <p>24 A I -- I don't understand what</p> <p>25 this -- the question with this, because this</p>	<p style="text-align: right;">52</p> <p>1 M. Ashley</p> <p>2 I -- if -- how am I supposed to</p> <p>3 know if he's doing something wrong? If he's</p> <p>4 giving me his Social Security number and his</p> <p>5 ID and everything comes out on the system when</p> <p>6 I open it up, if it didn't, I wouldn't be able</p> <p>7 to open the account. I wouldn't know that. I</p> <p>8 just open the account. That's what that</p> <p>9 means.</p> <p>10 Q Have you ever had an instance</p> <p>11 where somebody supplied false account or</p> <p>12 personal information?</p> <p>13 A False account or --</p> <p>14 Q And you did not open an account</p> <p>15 because of that?</p> <p>16 A Yeah. Well, it would -- it</p> <p>17 would -- if it's in the system, it would come</p> <p>18 up. If there's -- I wouldn't know that. I go</p> <p>19 by what we enter in the system. I don't</p> <p>20 have -- whatever I enter into the system,</p> <p>21 that's the only way I'm going to know. If --</p> <p>22 if the ID doesn't come up, we verify the ID.</p> <p>23 We go by identification, Social Security</p> <p>24 number and verification of address. That's</p> <p>25 all I do at account opening as far as</p>

<p style="text-align: right;">53</p> <p>1 M. Ashley</p> <p>2 verification. I -- I don't know how to</p> <p>3 elaborate on it any further. I wouldn't know</p> <p>4 if they're doing anything wrong.</p> <p>5 MR. STRAUSS: You don't</p> <p>6 have to --</p> <p>7 Q The next -- the next bullet, it</p> <p>8 says, "Resolve any material inconsistencies</p> <p>9 (account information given does not make</p> <p>10 sense, the type of business) prior to the</p> <p>11 account being opened."</p> <p>12 Do you know what that means?</p> <p>13 A The way you're reading it to me,</p> <p>14 no, I don't. If you can present it</p> <p>15 differently --</p> <p>16 MR. STRAUSS: What, the</p> <p>17 sentence you just read?</p> <p>18 MR. KELLY: Yes.</p> <p>19 MR. STRAUSS: It speaks for</p> <p>20 itself, James. What are you</p> <p>21 asking him?</p> <p>22 MR. KELLY: What that</p> <p>23 means.</p> <p>24 MR. STRAUSS: A word or the</p> <p>25 entire sentence?</p>	<p style="text-align: right;">55</p> <p>1 M. Ashley</p> <p>2 wonderful technology that will bring up if</p> <p>3 there's anything you need to know.</p> <p>4 Q Okay. If you go down to 3 now,</p> <p>5 Step 3 there, it says, "Work with the customer</p> <p>6 to find the right products and services to</p> <p>7 meet their needs."</p> <p>8 A Okay.</p> <p>9 Q Do you do that with your</p> <p>10 customers?</p> <p>11 A Yes. When they come in at</p> <p>12 account opening, we sit down and we go over --</p> <p>13 again, on a situation when the customer comes</p> <p>14 and sits at the desk -- in this specific one</p> <p>15 they came in. Clearly it was a promotion for</p> <p>16 miles. That's on the application. So it</p> <p>17 depends on the individual when they come in.</p> <p>18 Q Okay.</p> <p>19 A I mean, as far as discussing,</p> <p>20 they go through the whole process at account</p> <p>21 opening.</p> <p>22 Q And a few bullets down it says,</p> <p>23 "Accurately and clearly state all material</p> <p>24 information, terms, conditions, risks and</p> <p>25 costs for the customer."</p>
<p style="text-align: right;">54</p> <p>1 M. Ashley</p> <p>2 MR. KELLY: The entire</p> <p>3 sentence.</p> <p>4 MR. SPORN: I believe he</p> <p>5 already answered.</p> <p>6 Q Okay. If you could go down to</p> <p>7 where it says "Step 2," and then it says --</p> <p>8 there's a bullet, "Retail accounts."</p> <p>9 A Is this on 135?</p> <p>10 Q Yes, still the same page.</p> <p>11 A Okay. Step 2. Which bullet?</p> <p>12 Q It says, "Retail accounts." And</p> <p>13 then it says, "Review the existing account for</p> <p>14 any high-priority fraud notes or suspicious</p> <p>15 activity."</p> <p>16 A Right.</p> <p>17 Q Do you know what that means?</p> <p>18 A That would come up if there was</p> <p>19 anything in the system on ChexSystems. If an</p> <p>20 account was opened, it would show on the</p> <p>21 report. It would say, "Do not open account."</p> <p>22 So if they -- if they owed anything at another</p> <p>23 bank or an overdraft fee, that's when it would</p> <p>24 come up. Again, that's -- I wouldn't know</p> <p>25 that. That's why they have, you know,</p>	<p style="text-align: right;">56</p> <p>1 M. Ashley</p> <p>2 A Yes, that's clearly explained.</p> <p>3 Q What -- what is explained? What</p> <p>4 do you explain to them?</p> <p>5 MR. STRAUSS: Objection.</p> <p>6 Do you understand his question?</p> <p>7 A What's explained is typically of</p> <p>8 a checking account. Again, when you're</p> <p>9 working in the bank and you do sales day in</p> <p>10 and day out with the client -- when the client</p> <p>11 comes to open the account -- experience and</p> <p>12 knowing what needs explained, yes, you're</p> <p>13 opening a checking account.</p> <p>14 Again, when you're -- and I will</p> <p>15 try to shorten this, because it's going to</p> <p>16 get -- I don't want to make it go longer than</p> <p>17 it has to go.</p> <p>18 It's broken down in plain and</p> <p>19 simple terms that when they have -- clear --</p> <p>20 breaks down the outline; how many checks, if</p> <p>21 there's any fees involved, what balances</p> <p>22 requirements are there. It's outlined in the</p> <p>23 sales conversation verbally, and then it's</p> <p>24 also in the welcome kit.</p> <p>25 Q What do you verbally say? What</p>

<p>57</p> <p>1 M. Ashley</p> <p>2 is your typical --</p> <p>3 MR. STRAUSS: Objection.</p> <p>4 Q -- sales process?</p> <p>5 MR. STRAUSS: Vague.</p> <p>6 A I don't know how to answer that.</p> <p>7 Q The next bullet point says, "If</p> <p>8 a disclosure is required to be read to the</p> <p>9 consumer, be sure to deliver it with an</p> <p>10 appropriate pace and provide clarity as</p> <p>11 necessary."</p> <p>12 How do you know if a</p> <p>13 disclosure is required to be provided to a</p> <p>14 consumer?</p> <p>15 A How do I know if it's to be</p> <p>16 provided?</p> <p>17 Q Yes.</p> <p>18 A Well, that's the initial --</p> <p>19 what's provided in the welcome kit, which is</p> <p>20 presented -- which is required by us to give</p> <p>21 out at the time of the account opening, which</p> <p>22 is provided in the welcome kit, the manual to</p> <p>23 disclosures. And which also states, you know,</p> <p>24 the -- how the accounts are used and how --</p> <p>25 you know, the whole process.</p>	<p>59</p> <p>1 M. Ashley</p> <p>2 Citi-0000183.</p> <p>3 The document is titled</p> <p>4 "Client Manual Consumer Accounts,</p> <p>5 Including Our Privacy Notice, U.S.</p> <p>6 Markets, Effective July 1st,</p> <p>7 2010."</p> <p>8 (Plaintiffs' Exhibit</p> <p>9 11-Client Manual, was marked for</p> <p>10 identification as of this date.)</p> <p>11 Q Do you recognize this document?</p> <p>12 A It's a customer manual.</p> <p>13 Q Can you tell us what the client</p> <p>14 manual is,</p> <p>15 A It outlines the different --</p> <p>16 it's -- it's clearly what it states. It shows</p> <p>17 account opening, ownership, maintenance of the</p> <p>18 manual, account transactions. Again what I</p> <p>19 had stated before, if -- just as an example,</p> <p>20 if you open up a money market, you're allowed</p> <p>21 to do six transactions a month. So basically</p> <p>22 this manual is their -- their -- their</p> <p>23 guideline of -- to look back if they want to</p> <p>24 see anything dealing with check cashing. You</p> <p>25 know, basically their rules -- the rules</p>
<p>58</p> <p>1 M. Ashley</p> <p>2 Q The next bullet below that says,</p> <p>3 "Make representations that are clear, accurate</p> <p>4 and likely to be understood correctly."</p> <p>5 Do you do that with your</p> <p>6 customers?</p> <p>7 A Yes, I do.</p> <p>8 Q And then the next one says,</p> <p>9 "Check with the customer to ensure they</p> <p>10 understand the information you have provided."</p> <p>11 A Yes.</p> <p>12 Q Do you do that --</p> <p>13 A Yes --</p> <p>14 Q -- with your customers?</p> <p>15 A -- I do.</p> <p>16 Q And then the last one is,</p> <p>17 "Respond to any questions the customer may</p> <p>18 have."</p> <p>19 Do you do that with your</p> <p>20 customers?</p> <p>21 A Most definitely.</p> <p>22 MR. KELLY: Okay. I'm</p> <p>23 going to introduce as Plaintiffs'</p> <p>24 Exhibit 11 a document Bates</p> <p>25 stamped Citi-0000155 through</p>	<p>60</p> <p>1 M. Ashley</p> <p>2 and -- of how the accounts work.</p> <p>3 Q Earlier you said that this was</p> <p>4 provided in the welcome kit --</p> <p>5 A Yes.</p> <p>6 Q -- with the other documents --</p> <p>7 A Yes.</p> <p>8 Q -- correct?</p> <p>9 Do you ever take this document</p> <p>10 out of the welcome kit and go through it with</p> <p>11 the consumer?</p> <p>12 A Again, going through -- I can't</p> <p>13 recollect if I went through the manual with</p> <p>14 Mr. Hirschbaum [sic]. When I -- if they</p> <p>15 request, I would go through it with them. But</p> <p>16 I -- by the manual and when we give the</p> <p>17 welcome kit, I hand them the kit and the</p> <p>18 manual.</p> <p>19 And for the record, when the</p> <p>20 clients come in, they take it. If they want</p> <p>21 to go over it, if they don't have any -- if</p> <p>22 they have any questions, we go over it with</p> <p>23 them.</p> <p>24 They -- they take the manual. I</p> <p>25 provide it with the welcome kit. That's</p>

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1 M. Ashley
2 what's requested -- that's what we have to do.
3 Show them my welcome kit. Always have the
4 manual, the disclosure. Whatever they're
5 opening up, it's enclosed. And at the end of
6 the sales conversation, at the end of an
7 account opening, they have the kit.
8 And that's why also when the
9 signature cards are signed, that balance [sic]
10 the customer and me, to protect me that I'm
11 doing my job and you're in understanding of
12 what you've opened up. You've opened your
13 accounts. And then that's what I do from that
14 point. Do I go through it? No, I don't go
15 through every part of the manual.
16 Q Are you aware that this client
17 manual contains an arbitration clause?
18 A They -- all manuals -- of
19 course.
20 Q Do you know what arbitration is?
21 A What we're doing right now, when
22 you want to come in and arbitrate. If you --
23 it's a follow-up as far as -- that you have
24 the right without having to go through court.
25 You can go through representation and have a

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1 M. Ashley
2 where -- what address, where they came from?
3 No, I don't. I just provide the manual and
4 the disclosures.
5 Q Is it in a pamphlet form or is
6 it like --
7 A It's a booklet form.
8 Q It's a booklet?
9 A Small. It's about -- a little
10 bit less than an eight-by-ten. And there's
11 one for personal and there's one for business.
12 There's two separate disclosures, two separate
13 manuals, because there's different procedures
14 when you're opening up accounts. It's
15 consumer versus business.
16 Q Has there ever been a time where
17 there were no client manuals available, that
18 they ran out and you could not put them in a
19 welcome kit?
20 A Never. It never happened to me.
21 And never -- never ran into that situation.
22 We have to give them out. They're there.
23 It's part of our job. So, you know, you're
24 asking me something that I don't -- I don't
25 know how to answer. I give the client manual

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1 M. Ashley
2 lawyer and -- and arbitrate without having to
3 go to court. You can arbitrate. That's what
4 we're doing here right now. There's rules and
5 rights and, you know, what you're protected
6 by.
7 Q Do you give this client manual
8 in every kit to customers when they open an
9 account?
10 A The welcome kits? They're --
11 they're handed -- yes, they do. They get the
12 disclosure and they get the manual.
13 Q Where do the client manuals come
14 from?
15 MR. STRAUSS: Objection.
16 A I -- from a printing press. I
17 don't know. They're made. They're given to
18 us and they come -- they're provided to us. I
19 work for the bank. Their -- this is a legal
20 issue as far as -- these manuals are given to
21 us. What we're told and what's our due
22 diligence is to provide these manuals. Where
23 they come from, back off -- the legal
24 department designs these; the bank committees,
25 however -- all banks have them. So do I know

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1 M. Ashley
2 and the disclosure at every account opening.
3 That's plain and simple.
4 Q You don't recall never having
5 any available to put in the welcome kit?
6 A No.
7 Q Do you -- do you know that the
8 arbitration clause in this client manual
9 provides that the customer waives their right
10 to a trial by jury?
11 MR. STRAUSS: Objection.
12 The arbitration clause speaks for
13 itself.
14 A Yes, I'm aware.
15 Q Do you know what the right to a
16 trial by jury is?
17 MR. STRAUSS: Objection.
18 He's not an attorney.
19 A I'm not an attorney, so I don't
20 know.
21 Q Is that a "no"?
22 A That's a "no."
23 Q Can you go to -- I guess it's
24 Page 44 in this client manual. Go to the
25 Bates Stamp Number 177.

<p>65</p> <p>1 M. Ashley</p> <p>2 A (Perusing documents.)</p> <p>3 Q Have you ever had an instance</p> <p>4 where a customer asked you to explain what</p> <p>5 this arbitration clause means?</p> <p>6 A No.</p> <p>7 Q Did you ever explain it to</p> <p>8 anybody on your own initiative?</p> <p>9 A No.</p> <p>10 Q Do you -- do you -- if you can</p> <p>11 read right here, it says, at the first</p> <p>12 paragraph, "This section contains important</p> <p>13 information regarding your deposit, ready</p> <p>14 credit, checking plus or checking plus</p> <p>15 variable rate accounts and the services</p> <p>16 related thereto.</p> <p>17 "It provides that either you or</p> <p>18 we can require that any disputes be resolved</p> <p>19 by binding arbitration. Arbitration replaces</p> <p>20 the right to go to court, including the right</p> <p>21 to participate in a class action or similar</p> <p>22 proceeding and arbitration. The dispute is</p> <p>23 submitted to a neutral party, an arbitrator,</p> <p>24 instead of a judge or jury."</p> <p>25 Do you recall ever informing</p>	<p>67</p> <p>1 M. Ashley</p> <p>2 disclosures, we give the welcome kits. I'm --</p> <p>3 if we go over and the customer --</p> <p>4 Q I -- I know.</p> <p>5 A -- has questions --</p> <p>6 MR. STRAUSS: Let him</p> <p>7 finish his question -- let him</p> <p>8 finish his answer.</p> <p>9 MR. KELLY: He didn't let</p> <p>10 me finish my question.</p> <p>11 MR. STRAUSS: He was</p> <p>12 talking and your -- you</p> <p>13 interrupted him.</p> <p>14 MR. KELLY: No, I have a</p> <p>15 question --</p> <p>16 MR. STRAUSS: If you have a</p> <p>17 question, why don't you ask it.</p> <p>18 MR. KELLY: I'm trying to</p> <p>19 ask him. I'm just --</p> <p>20 MR. STRAUSS: Go for it.</p> <p>21 MR. KELLY: Thank you.</p> <p>22 Q The question is very simple:</p> <p>23 Have you ever informed a customer that this</p> <p>24 arbitration clause does away with their right</p> <p>25 to participate in a class action?</p>
<p>66</p> <p>1 M. Ashley</p> <p>2 customers that this arbitration clause does</p> <p>3 away with their right to a trial by jury?</p> <p>4 MR. STRAUSS: Objection.</p> <p>5 A I can't recall.</p> <p>6 Q Do you ever recall informing a</p> <p>7 customer that the arbitration clause takes</p> <p>8 away their right to participate in a class</p> <p>9 action, allegedly?</p> <p>10 MR. STRAUSS: Objection.</p> <p>11 A I don't -- I don't know how to</p> <p>12 present this. As far as required -- the rules</p> <p>13 and the regulations -- again, the cards are</p> <p>14 signed. We go over the account opening. And</p> <p>15 as far as -- I can't recall that day or going</p> <p>16 through that, so -- I can't recall three years</p> <p>17 ago.</p> <p>18 Q Well, in general I'm talking.</p> <p>19 Your -- your standard practice, policy, have</p> <p>20 you ever -- do you recall ever informing a</p> <p>21 customer that this arbitration clause</p> <p>22 required --</p> <p>23 A No, I don't.</p> <p>24 Q Well, let me just finish.</p> <p>25 A Well, I don't -- we're -- in the</p>	<p>68</p> <p>1 M. Ashley</p> <p>2 A I said no.</p> <p>3 THE COURT REPORTER: "No"</p> <p>4 is the answer?</p> <p>5 THE WITNESS: No.</p> <p>6 MR. KELLY: I would like to</p> <p>7 introduce as -- Plaintiffs'</p> <p>8 Exhibit 12 we're up to? -- a</p> <p>9 document entitled NY CLS CONST ART</p> <p>10 I, Section 2, which is the</p> <p>11 constitution of the State of New</p> <p>12 York, Section 2, trial by jury.</p> <p>13 This was also entered as</p> <p>14 Exhibit -- Plaintiffs' Exhibit 7</p> <p>15 with Vivian Safir, S-A-F-I-R.</p> <p>16 I'm also going to enter in</p> <p>17 Plaintiffs' Exhibit 13 along with</p> <p>18 this, which is U.S. Constitution</p> <p>19 Seventh Amendment.</p> <p>20 (Plaintiffs' Exhibit 12-NYS</p> <p>21 CLS CONST ART I, Section 2, was</p> <p>22 marked for identification as of</p> <p>23 this date.)</p> <p>24 (Plaintiffs' Exhibit</p> <p>25 13-U.S. Constitution Seventh</p>

<p style="text-align: right;">69</p> <p>1 M. Ashley</p> <p>2 Amendment, was marked for</p> <p>3 identification as of this date.)</p> <p>4 Q Can you review these two</p> <p>5 documents.</p> <p>6 A (Perusing documents.)</p> <p>7 Punishable by death?</p> <p>8 Okay.</p> <p>9 Q If you could look at Plaintiffs'</p> <p>10 Exhibit 12. That's the New York CLS document.</p> <p>11 A Right.</p> <p>12 Q It states, Section 2, "Trial by</p> <p>13 jury; how waived." And then it states, "Trial</p> <p>14 by jury in all cases in which it has</p> <p>15 heretofore been guaranteed by constitutional</p> <p>16 provision shall remain inviolate forever."</p> <p>17 Do you recognize this New York</p> <p>18 constitution provision, trial by jury?</p> <p>19 A No.</p> <p>20 Q Do you know what that -- what</p> <p>21 "trial by jury" means?</p> <p>22 A When you go to court and it's</p> <p>23 jury -- by -- by a jury, convicted by a jury</p> <p>24 or whatever. The jury is there.</p> <p>25 Q Do you know that everyone has a</p>	<p style="text-align: right;">71</p> <p>1 M. Ashley</p> <p>2 A I don't know what this has to do</p> <p>3 with --</p> <p>4 MR. STRAUSS: Let him ask</p> <p>5 you a question.</p> <p>6 THE WITNESS: Go ahead.</p> <p>7 I'm sorry. I apologize.</p> <p>8 Q Going back to the client manual</p> <p>9 with the arbitration clause, it states that</p> <p>10 arbitration does away with their right to</p> <p>11 trial by jury.</p> <p>12 A Right.</p> <p>13 Q Do you believe that's an</p> <p>14 important fact that customers should know</p> <p>15 before entering into agreements with Citibank?</p> <p>16 MR. STRAUSS: Objection.</p> <p>17 Do you want to speak to me?</p> <p>18 THE WITNESS: Yeah, I --</p> <p>19 yeah, can -- I don't --</p> <p>20 MR. STRAUSS: Do you</p> <p>21 understand what he's asking?</p> <p>22 THE WITNESS: Yeah.</p> <p>23 A If you're saying present this --</p> <p>24 but that's in the manuals, it's in the</p> <p>25 disclosure. Do I sit there and disclose that</p>
<p style="text-align: right;">70</p> <p>1 M. Ashley</p> <p>2 right to a trial by jury in a lawsuit?</p> <p>3 A Yes.</p> <p>4 MR. STRAUSS: Objection.</p> <p>5 Come on. Give me a break.</p> <p>6 Q Okay. If you could go to</p> <p>7 Plaintiffs' Exhibit 13, it says Seventh</p> <p>8 Amendment. "In suits at common law where the</p> <p>9 value in controversy shall exceed twenty</p> <p>10 dollars, the right of trial by jury shall be</p> <p>11 preserved, and no fact tried by a jury shall</p> <p>12 be otherwise re-examined in any court in the</p> <p>13 United States, than according to the rules of</p> <p>14 the common law."</p> <p>15 Do you understand that this is</p> <p>16 the U.S. constitution's --</p> <p>17 A Yeah, it's the U.S.</p> <p>18 constitution, but I don't sit here and think</p> <p>19 about it every day because I'm not a lawyer.</p> <p>20 Q Do you think that's an important</p> <p>21 right to have?</p> <p>22 A Yeah. I didn't write it, but</p> <p>23 yeah, I guess.</p> <p>24 MR. STRAUSS: Objection.</p> <p>25 Q Do you think that's --</p>	<p style="text-align: right;">72</p> <p>1 M. Ashley</p> <p>2 to them verbally, no. It's in the manual and</p> <p>3 the disclosure. I was not hired to -- to --</p> <p>4 to go through every aspect. It's there. You</p> <p>5 go over it. That's it. Plain and simple. I</p> <p>6 understand it, I just don't sit there and --</p> <p>7 MR. STRAUSS: Okay. That's</p> <p>8 your answer then. Fine.</p> <p>9 A I'm -- again, I have never went</p> <p>10 through this, so...</p> <p>11 MR. STRAUSS: It's okay.</p> <p>12 It's all right. It's okay.</p> <p>13 MR. KELLY: Can we take a</p> <p>14 ten-minute break?</p> <p>15 MR. STRAUSS: Ten minutes?</p> <p>16 THE WITNESS: No, we don't</p> <p>17 need ten minutes.</p> <p>18 THE VIDEOGRAPHER: I have</p> <p>19 to change -- I've got to change</p> <p>20 the disks anyway.</p> <p>21 THE WITNESS: I don't need</p> <p>22 ten minutes, I --</p> <p>23 THE VIDEOGRAPHER: We're</p> <p>24 now going off the record at</p> <p>25 approximately 12:02 p.m. End of</p>

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1 M. Ashley
2 Disk 1.
3 (Recess was taken.)
4 THE VIDEOGRAPHER: This is
5 the beginning of Disk 2 in the
6 Ashley deposition. We're now
7 going back on the record at
8 approximately 12:11 p.m.
9 MR. KELLY: I would like to
10 introduce as Plaintiffs' Exhibit
11 Number 14 a document Bates stamped
12 Citi-0000119 through Citi-0000132,
13 and it's titled "Personal Bankers
14 Foundations Participant Guide,
15 North America Consumer."
16 (Plaintiffs' Exhibit
17 14-Personal Bankers Foundations
18 Participant Guide, North America
19 Consumer, was marked for
20 identification as of this date.)
21 Q Can you -- do you recognize that
22 document?
23 A The document, no. I know of the
24 foundation, but I don't recognize the
25 document.

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1 M. Ashley
2 A No.
3 Q -- at Citibank?
4 A The checklist -- I don't recall
5 back to the day, but as far as looking at --
6 no, I don't recollect. I do not recall.
7 Q If we could go back to the
8 client manual.
9 (Mr. Kelly and Mr. Sporn
10 conferring.)
11 Q If we could go back to the
12 client manual just real quick. It states,
13 "Client Manual Consumer Accounts, including
14 our privacy notice." And then the privacy
15 notice is attached. Is that included with the
16 booklet, or is there a separate attachment?
17 Do you know?
18 A I don't remember. You're --
19 you're talking back to 2010. I don't
20 remember.
21 Q Do you recall if there was a
22 separate privacy notice that was also provided
23 to customers?
24 A I can't recall.
25 MR. KELLY: I would like to

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1 M. Ashley
2 Q Have you ever read this document
3 before?
4 A (Perusing document.)
5 No.
6 Q All right.
7 A Okay.
8 Q If you could go to Page 123. Do
9 you see it says "Customer care checklist"?
10 A Right.
11 Q Do you recognize that?
12 A This, no.
13 Q You've never seen a customer
14 care checklist?
15 A No.
16 Q Is this --
17 A Not this particular checklist,
18 no.
19 Q So when clients open up
20 accounts, you don't see this in your computer
21 system?
22 A I can't reco- -- I cannot -- I
23 don't remember.
24 Q You don't recall ever seeing a
25 customer care checklist --

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1 M. Ashley
2 introduce as Plaintiffs' Exhibit
3 Number 15 a document entitled "Our
4 Privacy Notice For New Customers,
5 Citibank."
6 (Plaintiffs' Exhibit
7 15-Privacy Notice, was marked for
8 identification as of this date.)
9 Q Can you just take a look at that
10 document real quick.
11 A (Perusing document.)
12 Q Can you compare it to the
13 privacy notice at the back of the client
14 manual.
15 A (Perusing document.)
16 The back of the manual?
17 Q Yeah.
18 A Okay. Right here. Okay.
19 Q Do you notice that the documents
20 look similar?
21 A Yes.
22 Q Do they look different in any
23 way?
24 MR. STRAUSS: Objection.
25 They are what they are.

<p style="text-align: right;">77</p> <p>1 M. Ashley</p> <p>2 Q Do you agree that the</p> <p>3 documents -- the paginations are different?</p> <p>4 MR. STRAUSS: Objection.</p> <p>5 The page numbers?</p> <p>6 A What you're showing me here to</p> <p>7 what's here, they look the same to me</p> <p>8 (indicating).</p> <p>9 Q Do you agree that they're on</p> <p>10 different pages?</p> <p>11 MR. STRAUSS: Objection.</p> <p>12 Again, they're not the same</p> <p>13 document. I will object to this</p> <p>14 entire line so I don't have to</p> <p>15 keep objecting.</p> <p>16 A No, I don't -- when you're</p> <p>17 saying they're separate, I don't -- no. No, I</p> <p>18 don't recall.</p> <p>19 Q You don't recall?</p> <p>20 A I don't know -- I don't</p> <p>21 understand.</p> <p>22 MR. STRAUSS: Neither do I,</p> <p>23 actually.</p> <p>24 A I don't understand. You're</p> <p>25 saying it's on the back of the manual that's</p>	<p style="text-align: right;">79</p> <p>1 M. Ashley</p> <p>2 falls on the pages? For example, in the</p> <p>3 client manual, the privacy notice, it looks</p> <p>4 like it's in a pamphlet form starting with</p> <p>5 Page I, II, III, all enrollment -- in Roman</p> <p>6 numerals, where in the separate privacy</p> <p>7 notice, Plaintiffs' Exhibit 15, it shows the</p> <p>8 Page numbers as 1, 2, and 3, not the Roman</p> <p>9 numerals. Do you agree with that?</p> <p>10 A Where? I don't --</p> <p>11 MR. STRAUSS: Once again,</p> <p>12 an objection. James, we'll --</p> <p>13 we'll stipulate that the page</p> <p>14 numbers are Roman numerals on the</p> <p>15 privacy notice on Exhibit 11, and</p> <p>16 on 15, they're not in Roman</p> <p>17 numerals, they're numerical, 1, 2,</p> <p>18 3, 4. So as to that, you have our</p> <p>19 agreement.</p> <p>20 MR. KELLY: Thank you.</p> <p>21 MR. STRAUSS: Can we please</p> <p>22 move on?</p> <p>23 MR. KELLY: Yeah, we will</p> <p>24 move on. Okay.</p> <p>25 Q Can we just go back to the</p>
<p style="text-align: right;">78</p> <p>1 M. Ashley</p> <p>2 here, it's separate (indicating). I have</p> <p>3 no -- I don't know how to -- I'm not answering</p> <p>4 that. I don't know how to answer that.</p> <p>5 Q Do you agree that the formatting</p> <p>6 is different?</p> <p>7 MR. STRAUSS: Objection.</p> <p>8 Do you want him to do a Compare</p> <p>9 Write on these? Maybe I could</p> <p>10 have our IT people do that for</p> <p>11 you, James.</p> <p>12 MR. KELLY: It's just a</p> <p>13 simple question.</p> <p>14 MR. STRAUSS: The witness</p> <p>15 isn't here to compare two</p> <p>16 documents here.</p> <p>17 MR. KELLY: I just want to</p> <p>18 get some stuff on the record.</p> <p>19 Q Would you agree that the</p> <p>20 formatting is different, the fonts? Do you</p> <p>21 see the fonts?</p> <p>22 A You're at -- this has nothing to</p> <p>23 do with me -- I'm not -- fonts?</p> <p>24 Q Would you agree that the</p> <p>25 formatting is different where the content</p>	<p style="text-align: right;">80</p> <p>1 M. Ashley</p> <p>2 client manual. If you could look at Page 178,</p> <p>3 Citi-178, at the bottom.</p> <p>4 A Okay.</p> <p>5 Q Do you see that signature card</p> <p>6 there?</p> <p>7 A Yes.</p> <p>8 Q Was that ever filled out by</p> <p>9 clients, the one contained in the client</p> <p>10 manual?</p> <p>11 A That doesn't get filled out by a</p> <p>12 client.</p> <p>13 Q Why?</p> <p>14 A It's put in the system when you</p> <p>15 print out -- as we went through the</p> <p>16 application, it prints out on the computer.</p> <p>17 It clearly prints it.</p> <p>18 Q Is this just like a sample</p> <p>19 template one?</p> <p>20 A I -- you're showing me something</p> <p>21 that's -- looks like it's half cut off. It</p> <p>22 doesn't even look like the same card. Well,</p> <p>23 it's half of it. It's a signature card. It's</p> <p>24 a template, yeah, because that section has --</p> <p>25 I mean, it clearly looks like the same one</p>

<p style="text-align: right;">81</p> <p>1 M. Ashley</p> <p>2 that's right here. This section, a part is</p> <p>3 cut off. It says "Signature" -- this is --</p> <p>4 these are two different cards.</p> <p>5 MR. KELLY: I would like to</p> <p>6 introduce as Plaintiffs' Exhibit</p> <p>7 Number 16 a document Bates stamped</p> <p>8 number Citi-0000184 through</p> <p>9 Citi-0000208.</p> <p>10 (Plaintiffs' Exhibit</p> <p>11 16-Marketplace Addendum, was</p> <p>12 marked for identification as of</p> <p>13 this date.)</p> <p>14 Q Do you recognize this document?</p> <p>15 A Well, it looks like this is part</p> <p>16 of the manual. The manual, client manual.</p> <p>17 This outlines all the products and the dif- --</p> <p>18 as I said before, when the customer -- we hand</p> <p>19 this out. This table of contents where they</p> <p>20 can go back to describes all the different</p> <p>21 products and the services for -- actually,</p> <p>22 down the road, if they choose to open up any</p> <p>23 other accounts, it's their -- it's their</p> <p>24 guidelines.</p> <p>25 Q Do you provide this document in</p>	<p style="text-align: right;">83</p> <p>1 M. Ashley</p> <p>2 more.</p> <p>3 Q There's a disclosure booklet?</p> <p>4 A The booklet. The manual and</p> <p>5 the client -- the disclosure. I don't have</p> <p>6 the booklets in front of me. Again, we're</p> <p>7 going back to 2010. The booklets that were</p> <p>8 provided, I provided at account opening.</p> <p>9 Q Is this marketplace addendum, is</p> <p>10 this a separate document, or is it --</p> <p>11 A I can't recall. Again, it's</p> <p>12 three years ago.</p> <p>13 MR. KELLY: I would like to</p> <p>14 introduce as Plaintiffs' Exhibit</p> <p>15 Number 16 --</p> <p>16 MR. SPORN: 17.</p> <p>17 MR. KELLY: 17, sorry.</p> <p>18 -- the declaration -- it's</p> <p>19 titled, "The declaration of Joanne</p> <p>20 Haslam," H-A-S-L-A-M, J-O-A-N.</p> <p>21 Q Do you know who Joanne Haslam</p> <p>22 is?</p> <p>23 MR. STRAUSS: It's Joan</p> <p>24 Haslam.</p> <p>25 MR. KELLY: Joan Haslam.</p>
<p style="text-align: right;">82</p> <p>1 M. Ashley</p> <p>2 the welcome kit also?</p> <p>3 A Yes, I do. The manual and the</p> <p>4 disclosure. The client manual and the</p> <p>5 disclosure booklet. They're two separate</p> <p>6 booklets. And they're in -- they're put</p> <p>7 inside the welcome kit, along with the</p> <p>8 checkbook. That's what I do.</p> <p>9 Q When you refer to "disclosure,"</p> <p>10 you're referring to this document?</p> <p>11 A The manual booklet.</p> <p>12 Q The marketplace addendum?</p> <p>13 A It's part -- yeah, it's part of</p> <p>14 the welcome kit. It's in there. Again, 2010,</p> <p>15 I haven't been there. I can't recall that</p> <p>16 specific day. But that packaging, it's there.</p> <p>17 It's in the welcome kit. Again, I can't go</p> <p>18 back to 2010. That's -- that's put in there.</p> <p>19 It's part of the welcome kit.</p> <p>20 Q What are you referring to when</p> <p>21 you say -- what are you referring to when you</p> <p>22 say "disclosure"?</p> <p>23 A The welcome kit. The manual and</p> <p>24 the disclosure booklet. I don't have it in</p> <p>25 front of me. I don't work at the bank no</p>	<p style="text-align: right;">84</p> <p>1 M. Ashley</p> <p>2 Excuse me.</p> <p>3 A No, I don't.</p> <p>4 Q If you could take a look at</p> <p>5 Page 3, Paragraph 7 -- just to provide you a</p> <p>6 foundation of this document, this document was</p> <p>7 submitted by Citibank in this lawsuit</p> <p>8 explaining the policies and procedures of</p> <p>9 Citibank --</p> <p>10 A Okay.</p> <p>11 Q -- when they open up an account,</p> <p>12 a customer. And Joan Haslam is the vice</p> <p>13 president and senior program manager for</p> <p>14 Citibank.</p> <p>15 A Okay.</p> <p>16 Q And she says, in Paragraph 7,</p> <p>17 that "Like any other deposit account opened</p> <p>18 with Citibank from October 2010, the accounts</p> <p>19 are subject to the Citibank client manual</p> <p>20 effective January 1st, 2010 (the 'client</p> <p>21 manual') attached hereto as Exhibit 3 as an</p> <p>22 exemplar of the client manual. In addition to</p> <p>23 the client manual, the Romanov account is also</p> <p>24 subject to the Citibank California and Nevada</p> <p>25 marketplace addendum effective January 1st,</p>

<p style="text-align: right;">85</p> <p>1 M. Ashley</p> <p>2 2010."</p> <p>3 She doesn't state that New York</p> <p>4 customers are subject -- New York customers'</p> <p>5 accounts are subject to this marketplace</p> <p>6 addendum in New York that we just talked</p> <p>7 about.</p> <p>8 A Okay.</p> <p>9 Q Do you know why she --</p> <p>10 MR. STRAUSS: Objection.</p> <p>11 A No.</p> <p>12 MR. STRAUSS: He's not here</p> <p>13 to testify as to what Joan Haslam</p> <p>14 submitted in her declaration. He</p> <p>15 doesn't know who Joan Haslam is.</p> <p>16 He has nothing to do with the</p> <p>17 preparation of this.</p> <p>18 Q Just a few more questions to go</p> <p>19 through.</p> <p>20 Do you have any personal</p> <p>21 recollection that Mr. Hirsch was provided a</p> <p>22 welcome kit?</p> <p>23 MR. STRAUSS: Objection.</p> <p>24 Form.</p> <p>25 A I provide --</p>	<p style="text-align: right;">87</p> <p>1 M. Ashley</p> <p>2 signature card is signed for my protection.</p> <p>3 That's it. I give out the disclosures and</p> <p>4 everything that's done at the end of account</p> <p>5 opening. You're asking about something 2010.</p> <p>6 I can't -- you know --</p> <p>7 Q Did Citibank -- anyone at</p> <p>8 Citibank ever ask you to provide a declaration</p> <p>9 or a statement, a signed statement, that you</p> <p>10 provided the welcome kit or client manual to</p> <p>11 Mr. Hirsch?</p> <p>12 MR. STRAUSS: Objection.</p> <p>13 A No.</p> <p>14 Q Do you know Nancy Wilson?</p> <p>15 A Who?</p> <p>16 Q A person named Nancy Wilson that</p> <p>17 works at Citibank, do you know her?</p> <p>18 A No. Did she work out of Great</p> <p>19 Neck? I don't know any Nancy Wilson.</p> <p>20 Q Do you know a Fazare Subear?</p> <p>21 A No.</p> <p>22 Q When did you first meet with</p> <p>23 Citibank's attorneys to discuss this</p> <p>24 deposition?</p> <p>25 A To discuss? A week ago.</p>
<p style="text-align: right;">86</p> <p>1 M. Ashley</p> <p>2 Q It's yes or no.</p> <p>3 A Yes.</p> <p>4 Q You have a personal</p> <p>5 recollection?</p> <p>6 A No.</p> <p>7 Retract the question because I'm</p> <p>8 jumping over you. I -- rephrase the question</p> <p>9 again, please.</p> <p>10 Q Do you have a personal</p> <p>11 recollection that Mr. Hirsch was provided a</p> <p>12 welcome kit?</p> <p>13 MR. STRAUSS: Objection to</p> <p>14 form. Vague.</p> <p>15 A I can't recall that day.</p> <p>16 Q Do you have a personal</p> <p>17 recollection that Mr. Hirsch was provided a</p> <p>18 client manual?</p> <p>19 A Again, it's -- recall that day?</p> <p>20 He -- I can't recall that day. I know that</p> <p>21 it's provided. Can I go back to that day?</p> <p>22 It's he said/she said. I know what I provide.</p> <p>23 I provide a manual, the disclosure and the</p> <p>24 welcome kit at account openings when it's</p> <p>25 done, the account opening. That's why the</p>	<p style="text-align: right;">88</p> <p>1 M. Ashley</p> <p>2 Q You met with them one time prior</p> <p>3 to today?</p> <p>4 A Just today. And back and forth,</p> <p>5 you know, to appear and when I was told what</p> <p>6 was to come about.</p> <p>7 Q Were you provided any documents</p> <p>8 or did you review any documents in preparation</p> <p>9 for this deposition that were not presented to</p> <p>10 you today?</p> <p>11 A Ver- -- documents? Can I take a</p> <p>12 five-minute break?</p> <p>13 MR. STRAUSS: Everything he</p> <p>14 reviewed has been produced.</p> <p>15 A Reviewed. I don't --</p> <p>16 Q If you could say that for the</p> <p>17 record.</p> <p>18 A Yes, the documents were provided</p> <p>19 to review, and that's -- yes.</p> <p>20 Q So there were no other documents</p> <p>21 that you reviewed --</p> <p>22 A No.</p> <p>23 Q -- in preparation that were not</p> <p>24 provided today?</p> <p>25 A No. I don't know how to answer</p>

<p style="text-align: right;">89</p> <p>1 M. Ashley 2 these questions. 3 Q Do you know a George Lotto? 4 A Yes, I do. 5 Q Who is he? 6 A The branch manager. 7 Q For Great Neck? 8 A Yes. 9 Q Is he the one -- the manager 10 that brought you to Great Neck? 11 MR. STRAUSS: Objection to 12 form. 13 A No. 14 Q Did you ever personally 15 introduce Mr. Hirsch to Mr. Lotto? 16 A I can't -- I can't recollect. 17 Q Was it -- 18 A We -- we -- at the end of 19 account opening, if there's a time frame, we 20 can. Again, I cannot say to that date, but 21 our practice is to introduce. But you're 22 asking me -- that day he could have said, "I 23 don't have time. I have to go." And that 24 does happen, but that's part of my practice. 25 So again, go back to that day,</p>	<p style="text-align: right;">91</p> <p>1 M. Ashley 2 of the accounts, if they choose to open up an 3 account with having a bounce protection 4 product added to the checking account. 5 So you're asking me something 6 that I don't understand if there's something 7 different with -- in the disclosure. I -- 8 I -- so I don't -- I don't know how to answer 9 that. 10 Q Do you see it state that this 11 section contains important information 12 regarding a regular checking account? 13 MR. STRAUSS: Objection. 14 It says what it says. 15 A It's there -- it's -- 16 MR. KELLY: I think we're 17 done. Thank you. 18 MR. STRAUSS: Okay. 19 THE VIDEOGRAPHER: No 20 questions, sir? 21 MR. STRAUSS: No. 22 THE VIDEOGRAPHER: We're 23 now going off the record at 24 approximately 12:35 p.m. 25 This is the end of Disk</p>
<p style="text-align: right;">90</p> <p>1 M. Ashley 2 there's no videotape showing me doing it -- I 3 would bring the client over. But nine out of 4 ten, "I have no time. I gotta go." 5 Just like when you go through 6 the whole process. "Yes, I understand. Thank 7 you very much. I will be in touch with you if 8 I need something." Plain and simple. 9 Q Okay. I believe we have one 10 more. If we would go back to the client 11 manual just one more time to -- to Page 177. 12 Back to the arbitration provision. If you 13 look at the top, the first paragraph, it says, 14 "This section contains important information 15 regarding your deposit, ready credit, checking 16 plus or checking plus (variable rate) accounts 17 and the services related thereto." 18 Do you agree that this -- this 19 statement here does not apply to regular 20 checking accounts at Citibank? 21 MR. STRAUSS: Objection. 22 A It -- again, I don't know how to 23 answer this, because this is part -- this is 24 what's in the writing here. Ready credit, 25 checking plus, that's a product. That's part</p>	<p style="text-align: right;">92</p> <p>1 2 Number 2 in the Ashley deposition. 3 (Time noted: 12:35 p.m.) 4 5 6 7 8 9 10 Subscribed and sworn to 11 before me this day 12 of , 2014. 13 14 15 16 17 18 19 20 21 22 23 24 25 Notary Public</p>

95

1
2 CERTIFICATION
3
4 I, CHERYL ROBERTSON, a Notary Public in
5 and for the State of New York, do hereby certify:
6 THAT the witness whose testimony is
7 hereinbefore set forth, was duly sworn by me; and
8 THAT the within transcript is a true
9 record of the testimony given by said witness.
10 I further certify that I am not related,
11 either by blood or marriage, to any of the parties
12 in this action; and
13 THAT I am in no way interested in the
14 outcome of this matter.
15 IN WITNESS WHEREOF, I have hereunto set
16 hand this 10th day of January 2014.
17
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Cheryl Robertson

[illegible]

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<p>1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF NEW YORK 3 Case No. 12 Civ. 1124(DAB) 4 ----- 5 BERTRAM HIRSCH and IGOR : 6 ROMANOV, on behalf of 7 themselves and all others : 8 similarly situated, 9 Plaintiff, 10 vs. DEPOSITION OF: 11 CITIBANK, N.A., BERTRAM HIRSCH 12 Defendant. 13 ----- 14 TRANSCRIPT of testimony as taken by and 15 before PATRICIA A. SANDS, a Shorthand Reporter 16 and Notary Public of the States of New York and 17 New Jersey, at the offices of STROOCK & STROO 18 & LAVAN, LLP, 180 Maiden Lane, New York, New 19 York, on Thursday, January 16, 2014, commencing 20 at 10:20 in the forenoon. 21 22 23 24 25</p>	<p>1 2 3 I N D E X 4 WITNESS EXAMINATION 5 BERTRAM HIRSCH 6 Mr. Strauss 5 7 8 E X H I B I T S 9 NUMBER DESCRIPTION PAGE 10 Hirsch 11 1 Brief 37 12 2 Transaction report 40 13 3 Signature card 52 14 4 Declaration 56 15 5 Account opening document 63 16 6 Client Manual 70 17 7 Statement 82 18 8 Direct mail offer 85 19 20 (Exhibits retained by reporter.) 21 22 23 24 25</p>
<p>1 APPEARANCES: 2 3 SCHOENGOLD & SPORN PC 4 World Wide Plaza 5 393 West 49th Street 6 Suite 5HH 7 New York, New York 10019 8 BY: SAMUEL P. SPORN, ESQ. 9 For the Plaintiff 10 212 964-0046 11 12 LAW OFFICE OF JAMES C. KELLY 13 244 Fifth Avenue Suite K-278 14 New York, New York 10001 15 BY: JAMES C. KELLY, ESQ. 16 Co-Counsel for the Plaintiff 17 212 920-5042 18 jkelly@jckellylaw.com 19 20 STROOCK & STROOCK & LAVAN LLP 21 180 Maiden Lane 22 New York, New York 10038-4982 23 BY: JOSEPH E. STRAUSS, ESQ. 24 For the Defendant 25 212 806-5497 jstrauss@stroock.com</p>	<p>1 2 3 4 IT IS HEREBY STIPULATED AND AGREED, 5 and between the attorneys for the respective 6 parties hereto, that this examination may be 7 sworn to before any Notary Public. 8 9 IT IS FURTHER STIPULATED AND AGREE 10 that the sealing and filing of the said 11 examination shall be waived. 12 13 IT IS FURTHER STIPULATED AND AGREE 14 that all objections to questions except as to 15 form shall be reserved for trial. 16 17 18 19 20 21 22 23 24 25</p>

<p>5</p> <p>1 B E R T R A M H I R S C H, 2 3 Arbor Street 3 Great Neck, New York 11021, 4 having been sworn, was examined 5 and testified as follows: 6 7 EXAMINATION 8 BY MR. STRAUSS: 9 Q Good morning, Mr. Hirsch? 10 A Good morning. 11 Q I know we've met before. My name is 12 Joseph Strauss, I'm from the law firm of Strook 13 & Strook & Lavan representing Citibank in this 14 action and I will be taking your deposition 15 today. 16 Would you state and spell your full name. 17 A Bertram Hirsch, B-E-R-T-R-A-M, 18 H-I-R-S-C-H. 19 Q And could you please state your home 20 address for the record. 21 A Three Arbor Street, Great Neck, New 22 York 11021. 23 Q Have you ever had your deposition 24 taken before? 25 A Never. Q Have you ever taken a deposition before?</p>	<p>7</p> <p>1 College? 2 A I had a triple major. 3 Q What was your triple major? 4 A Political science, sociology and 5 history. 6 Q Were you awarded any honors or awards 7 in college? 8 A At graduation I had what they called, 9 I believe, if I remember correctly, 10 Departmental Honors in sociology, because I had 11 a straight A in sociology. So that merited 12 Departmental Honors at graduation. Other than 13 that I don't recall that there was anything 14 else. 15 Q And where did you graduate from law 16 school? 17 A New York University. 18 Q What year did you graduate from law 19 school? 20 A 1971. 21 Q So you went straight through after 22 graduating from college to law school? 23 A Yes. 24 Q Did you work while in law school? 25 A I worked in college, I worked in law</p>
<p>6</p> <p>1 A I have participated, but I -- I would 2 have to say no to that. 3 Q If you don't understand any of my 4 questions for any reason, please let me know. 5 If you answer a question, I will assume that 6 you've understood it. 7 Do you understand that? 8 A Yes. 9 Q And I am sure you know the testimony 10 you are giving here today is under oath, 11 subject to penalties of perjury just as if you 12 were testifying in a court of law. 13 Do you understand that? 14 A Yes. 15 Q Could you describe your educational 16 background since high school? 17 A Okay. Bachelor's degree, law degree. 18 Q And where did you receive your 19 bachelor's degree from? 20 A Queens College City University of New 21 York. 22 Q And what year did you graduate from 23 Queens College? 24 A 1968. 25 Q Did you have a major at Queens</p>	<p>8</p> <p>1 school, I worked in high school. 2 Q While in law school where did you 3 work? 4 A I was substitute teaching for the New 5 York City then called Board of Education, and I 6 was also employed at the Association on 7 American Indian Affairs. 8 Q And what were your duties for the 9 Association of American Indian Affairs? 10 A My duties were to -- I was -- my 11 title was assistant to the executive director, 12 which basically meant that I worked on whatever 13 the executive director assigned me to work on. 14 Which had to do with a lot of research for 15 legislative activities that the organization 16 was involved in, as well as just hands-on 17 assistance to Indian tribes across the country 18 on a multitude of concerns that were brought to 19 the attention of the organization by one or 20 another Indian tribe. 21 It was a very eclectic thing, no -- there 22 is no one way to define it. It was ever 23 changing and covered a tremendous amount of 24 ground of issues. If you want, I could expound 25 on it for hours, but.</p>

<p style="text-align: right;">9</p> <p>1 Q I'm sure you could.</p> <p>2 A Yeah.</p> <p>3 Q While in law school did you have a</p> <p>4 particular concentration?</p> <p>5 A I don't recall that that was ever</p> <p>6 something that law school, ah -- that one did</p> <p>7 in law school, except at the master's level.</p> <p>8 So no. The answer is no.</p> <p>9 Q When you graduated from NYU did you</p> <p>10 receive any honors or awards?</p> <p>11 A No.</p> <p>12 Q Were you on Law Review?</p> <p>13 A No.</p> <p>14 Q Were you on any other journal?</p> <p>15 A No. Who had the time? You know, I</p> <p>16 was, you know, between studies and all of the</p> <p>17 work I was doing outside of studies -- no,</p> <p>18 there was just no time for that.</p> <p>19 Q Could you describe your employment</p> <p>20 history since you graduated from law school.</p> <p>21 A Upon graduation I went to work for</p> <p>22 the Ogala Sioux tribe, O-G-A-L-A, Sioux tribe</p> <p>23 in South Dakota at the Pine Ridge Indian</p> <p>24 Reservation. And I was there for just under a</p> <p>25 year.</p>	<p style="text-align: right;">11</p> <p>1 working with the legal services attorney on</p> <p>2 some of his stuff.</p> <p>3 But it included some very minimal criminal</p> <p>4 law representation, and mostly tribal issues</p> <p>5 having to do with treaty rights, having to do</p> <p>6 with the relations between the tribe and the</p> <p>7 federal government and dealing with different</p> <p>8 federal agencies on issues of concern to the</p> <p>9 tribe, whether it be housing, education,</p> <p>10 health, just another broad range of categories</p> <p>11 of things that the tribes are involved with the</p> <p>12 federal government with respect to.</p> <p>13 Q What types of issues arise in treaty</p> <p>14 rights cases?</p> <p>15 A Hunting rights, fishing rights, water</p> <p>16 rights, land rights, religious freedom rights,</p> <p>17 ah -- it just goes on and on.</p> <p>18 Q And are these treaties between the</p> <p>19 specific tribe you were working for and the</p> <p>20 United States?</p> <p>21 A Exactly.</p> <p>22 Q And then you said you came back to</p> <p>23 New York in 1972?</p> <p>24 A Right.</p> <p>25 Q To the Association of American Indian</p>
<p style="text-align: right;">10</p> <p>1 And then I went to, ah -- I came back to</p> <p>2 New York and I went back to work for the</p> <p>3 Association on American Indian Affairs where I</p> <p>4 was staff counsel -- ultimately chief staff</p> <p>5 counsel, because we hired a couple of more</p> <p>6 lawyers -- but I was staff counsel there from</p> <p>7 1970, ah, spring of '72 to summer of '77.</p> <p>8 And from then forward I was -- I have been</p> <p>9 in private practice. Solo practitioner.</p> <p>10 Q Could you describe your duties when</p> <p>11 you worked -- I can't pronounce the tribe --</p> <p>12 when you worked for the tribe in South Dakota</p> <p>13 in 1971?</p> <p>14 A Well, you know, I was fresh out of</p> <p>15 law school, I was trying to learn how to be a</p> <p>16 lawyer. It was not something that they teach</p> <p>17 you in law school particularly. And so my</p> <p>18 duties, I was actually -- I was employed by the</p> <p>19 tribe, but I was physically situated in the</p> <p>20 office of the attorney who was employed by</p> <p>21 South Dakota Legal Services, a federally funded</p> <p>22 legal services program.</p> <p>23 And so I was basically doing whatever work</p> <p>24 the tribe asked me to do. And in addition when</p> <p>25 they didn't have something for me to do, I was</p>	<p style="text-align: right;">12</p> <p>1 Affairs?</p> <p>2 A Association on American Indian</p> <p>3 Affairs.</p> <p>4 Q On American Indian Affairs. And</p> <p>5 that's where you had worked previously while in</p> <p>6 law school?</p> <p>7 A I started in college and I worked</p> <p>8 there all through law school, yes.</p> <p>9 Q Could you describe your duties for</p> <p>10 the Association on American Indian Affairs?</p> <p>11 A Well, my duties were to, again, to</p> <p>12 work on whatever the executive director wanted</p> <p>13 to work on. To work on things that I</p> <p>14 independently decided to work on that were okay</p> <p>15 with the executive director and the board of</p> <p>16 directors, I should say. And also to handle a</p> <p>17 great deal of inquiries and requests for</p> <p>18 assistance that came in over the phone every</p> <p>19 day all day from tribes all across the country.</p> <p>20 So, I mean, again, this involved -- it</p> <p>21 involved litigation to a -- not to a great</p> <p>22 extent, but the organization is a nonprofit</p> <p>23 organization that relied on charitable</p> <p>24 contributions, so the funds for litigation were</p> <p>25 not extensive by any means, but there was</p>

<p style="text-align: right;">13</p> <p>1 litigation that we involved ourselves in.</p> <p>2 And a tremendous amount of work with</p> <p>3 federal agencies, the Congress, lobbying bills.</p> <p>4 Having a lot of success back then in the 1970s,</p> <p>5 in particular, it was a great time for getting</p> <p>6 legislation passed that was favorable to Indian</p> <p>7 tribes. So I worked on just about every single</p> <p>8 bit of, piece of legislation in the 1970s that</p> <p>9 became law that are still law today and made</p> <p>10 major milestones for tribes.</p> <p>11 And a lot of advocacy with the US</p> <p>12 Department of the Interior, which has primary</p> <p>13 responsibility over indigenous affairs in the</p> <p>14 United States. A lot of work with the then</p> <p>15 called Department of Health, Education and</p> <p>16 Welfare, now it's Health and Human Services.</p> <p>17 And the Department of Treasury we had</p> <p>18 worked with and the Department of Labor. I</p> <p>19 don't think that the Department of Education</p> <p>20 existed then -- oh, it was part of HEW, so it</p> <p>21 didn't exist then. But, yeah, that was</p> <p>22 essentially it.</p> <p>23 Q So you handled both legislative and</p> <p>24 with some litigation matters?</p> <p>25 A Legislative, administrative,</p>	<p style="text-align: right;">15</p> <p>1 1974.</p> <p>2 Q And what case was that? I'm sure you</p> <p>3 remember.</p> <p>4 A Decoto against District County Court.</p> <p>5 Which I think you can find at 425 US.</p> <p>6 Q Could you briefly describe --</p> <p>7 A 1975 decision.</p> <p>8 Q 1975?</p> <p>9 A March.</p> <p>10 Q Could you briefly describe the issue</p> <p>11 in that case.</p> <p>12 A Well, the issue, ah, the narrowest</p> <p>13 way to describe it is whether or not a</p> <p>14 particular congressional enactment in 1891</p> <p>15 terminated the reservation of the Sisseton-</p> <p>16 Wahpeton Sioux tribe. S-I-S-S-E-T-O-N hyphen</p> <p>17 W-A-H-P-E-T-O-N Sioux tribe. Which in the</p> <p>18 Dakota language is Sisseton-Wahpeton</p> <p>19 (pronunciation).</p> <p>20 Q Was the outcome favorable?</p> <p>21 A The outcome was not favorable.</p> <p>22 Q Okay.</p> <p>23 A It was a six to three defeat, and</p> <p>24 Justice Douglas wrote the dissent. And I think</p> <p>25 it was perhaps his last opinion I think</p>
<p style="text-align: right;">14</p> <p>1 litigation. A great deal of travel to</p> <p>2 reservations around the country and working on</p> <p>3 local issues for one tribe or another, yeah.</p> <p>4 Q When were you admitted to the bar at</p> <p>5 this point?</p> <p>6 A 1971 in South Dakota and Nebraska,</p> <p>7 1972 in New York. And I think it was also 1972</p> <p>8 in the District of Columbia.</p> <p>9 Q Any others?</p> <p>10 A No. I mean not state bars, but</p> <p>11 numerous federal courts.</p> <p>12 Q Do you recall the federal courts you</p> <p>13 were admitted to?</p> <p>14 A Okay. Second Circuit, ah, go through</p> <p>15 the circuits -- Second, Eighth, Ninth, Tenth.</p> <p>16 I'm trying to remember if I'm in the Eleventh.</p> <p>17 I'm in the federal circuit, too, but. And then</p> <p>18 federal district courts: The Southern District</p> <p>19 of New York, Eastern District of New York,</p> <p>20 Northern District of New York, South Dakota and</p> <p>21 Nebraska.</p> <p>22 Q What about the United States Supreme</p> <p>23 Court?</p> <p>24 A US Supreme Court, yes, of course. I</p> <p>25 was admitted there in 1974. Argued a case in</p>	<p style="text-align: right;">16</p> <p>1 possibly before he left the court.</p> <p>2 Q Did you ever argue any other cases in</p> <p>3 the US Supreme Court?</p> <p>4 A I didn't personally argue, but I have</p> <p>5 participated in cases that where certiorari was</p> <p>6 granted, but I was not the attorney who did the</p> <p>7 argument. There were several of those.</p> <p>8 Q Were you ever involved in a case as</p> <p>9 an attorney where one of the parties challenged</p> <p>10 the existence of a contract?</p> <p>11 A The existence of a contract? Uhm,</p> <p>12 not that I can recall, but maybe.</p> <p>13 I mean, "contract" covers a broad scope of</p> <p>14 territory, but, you know, what constitutes a</p> <p>15 contract -- I mean, in a sense a treaty is a</p> <p>16 contract, too.</p> <p>17 Q That's exactly where I was going, but</p> <p>18 maybe more pertinent to your work, any cases in</p> <p>19 which a party challenged the existence of a</p> <p>20 treaty?</p> <p>21 A Oh, yeah. Oh, sure. Oh, the</p> <p>22 existence of a treaty? No, not challenged</p> <p>23 the -- no, no, I've never been involved in a</p> <p>24 case where the existence of a treaty was</p> <p>25 challenged. Interpretations of treaties, yes.</p>

<p style="text-align: right;">17</p> <p>1 But not the actual existence itself, no. 2 Q And with respect to the 3 interpretation of treaties, does that involve 4 contract law? 5 A No. No, it does not. 6 Q It's confined to the particular 7 language of the treaty at issue? 8 A Yeah, and a body of federal Indian 9 law that has developed with respect to that, 10 right. Not contract law, I think as you mean 11 it, no. 12 Q Have you ever been involved in a case 13 as an attorney in which a party asserted claims 14 against a bank or a credit card company? 15 A No. 16 Q And I believe you said that in the 17 summer of 1977 you left the Association on 18 American Indian Affairs and went into private 19 practice? 20 A Yes. 21 Q First, why did you leave the 22 Association on American Indian Affairs? 23 A Well, it was time, I guess, to move 24 on. One thing. Two, I had an interest in, 25 frankly, in trying to increase my income. That</p>	<p style="text-align: right;">19</p> <p>1 calls. It was not hard to get work back in the 2 day, you know. Now there is a lot more 3 competition for that work, a lot more. But 4 back then much less so and it wasn't that 5 difficult to get work. 6 Q And as general counsel your work, I 7 assume, was fairly varied? 8 A Extraordinarily so, yes. 9 Q So you would handle tort matters, 10 contract matters, land use? 11 A Actually not so much, believe it or 12 not. What I -- what I was handling was an 13 awful lot of disputes which were common then 14 and common now between tribes and states over 15 jurisdictional issues. 16 I mean, there is a long, long history of 17 states seeking to impinge on what tribes 18 believe to be their exclusive jurisdictional 19 domain in a whole host of areas, criminal and 20 civil, and the tribes fighting back as best 21 they could. So there was that as a constant 22 element. 23 There was trying to assist tribes in 24 developing housing for their people. And 25 tribally controlled schools, that's another</p>
<p style="text-align: right;">18</p> <p>1 was a significant motivating factor. That was 2 basically it. I mean, it was just -- it just 3 felt like the right time to move on. 4 There wasn't anything special about it. I 5 mean, they would have been delighted had I 6 stayed. They wanted me to stay. 7 Q And since 1977 you have been in solo 8 practice? 9 A Yes. 10 Q Can you describe the nature of your 11 practice? 12 A It was I would say 98 percent 13 representing Indian tribes, and national and 14 regional native American organizations. 15 Q Representing them in what type of 16 matters? 17 A I was general counsel to a number of 18 native American organizations simultaneously. 19 I mean, it was quite overwhelming really. And 20 I was also a general counsel to a number of 21 Indian tribes at the same time. And then with 22 respect to other tribes and organizations, I 23 just did piece work as it came in. 24 I actually had spent a lot of years doing 25 this. I was -- I was known. You know, I got</p>	<p style="text-align: right;">20</p> <p>1 area of jurisdiction where the states thought 2 that tribal children needed to go to the state 3 or local county schools. And the tribes were 4 resisting that tremendously at the time I came 5 along, because of discrimination. Massive 6 amounts of discrimination. They wanted their 7 own schools, which they ultimately achieved in 8 getting. And I helped set up the first 9 tribally controlled schools in the country. 10 Much later on -- I mean, I'm just skipping 11 around here, but much later on when the battle 12 was won to recognize the right of tribes to 13 open and run casinos, I also helped establish 14 the very first tribal casinos in the country. 15 And litigated the very first challenge to that 16 law, successfully at that time, in the Eighth 17 Circuit. 18 And so on. I mean, it was just, ah -- I 19 don't know what to tell you, but anything and 20 everything that was going on in federal Indian 21 law through several decades I was involved in. 22 The Indian Child Welfare Act was a major 23 thing that I was involved in. It was signed 24 into law by Jimmy Carter in 1978, it took 25 eleven years to secure enactment of that. I</p>

<p style="text-align: right;">21</p> <p>1 was the principal drafter of that law, and 2 lobbied it for eleven years and we finally got 3 it passed. 4 That was the subject of a US Supreme Court 5 decision, twice. The first one was in 1989, a 6 decision by Justice Marshal which was a 7 tremendous victory, six to three in favor of 8 our position. 9 Q What was your position? 10 A But I didn't argue that case either, 11 but I had a major role in participating in it 12 at the Supreme Court level. 13 Q What was the issue in that case? 14 A The issue in that case had to do with 15 whether or not the adoption -- it was an Indian 16 Child Welfare case, it had to do with whether 17 or not the adoption of two children who were 18 twins and members of the Mississippi Choctaw 19 tribe, whether or not the adoption was valid. 20 Or whether it was invalid -- it was valid, the 21 Mississippi State Court said it was valid under 22 state law, but the challenge was that it wasn't 23 valid under the federal law. 24 And so the Supreme Court agreed that it 25 wasn't valid under the federal law, because</p>	<p style="text-align: right;">23</p> <p>1 Q Are you currently retired from 2 practice? 3 A To a significant degree, but I 4 wouldn't say entirely no. 5 Q So you're semi-retired? 6 A Yeah. 7 Q What percentage of your time would 8 you say you spend practicing law today? 9 A Oh, somewhere in the 15 to 20 percent 10 range. 11 Q And was that the case as of 12 October 2010 as well? 13 A Yeah, I would say so. 14 Q Okay. 15 A Yeah. 16 Q And other than this action have you 17 ever been personally involved in a case as 18 either a plaintiff or a defendant? 19 A I think I have had a couple of small 20 claims cases years ago, not anytime recently. 21 And as a plaintiff or a defendant -- never as a 22 defendant, no. 23 Q That's good. 24 A No. And as a plaintiff -- no, not 25 really.</p>
<p style="text-align: right;">22</p> <p>1 they said the, ah -- the ultimate decision was 2 that the tribe had exclusive jurisdiction to 3 determine that adoption and the State Court of 4 Mississippi had no jurisdiction. And so they 5 voided that adoption. 6 Q What was the tribe's exclusive 7 jurisdiction based on? 8 A On the statute. 9 Q On the statute. 10 A Yeah. The statute has a -- it's a 11 complicated statute, but one section of it says 12 that tribes have exclusive jurisdiction to 13 determine adoptions, foster care and child 14 custody issues pertaining to children who 15 either reside on or are domiciled on the 16 tribe's reservation. 17 Q So it's -- 18 A And so there was a whole -- there was 19 a whole dispute in the case over the definition 20 of "domicile": Is it a state law definition of 21 "domicile", or is there a more universal 22 federal law definition which should apply here, 23 so that there is uniformity nationwide on how 24 the Indian child welfare records apply. 25 Ultimately the court opted for the latter.</p>	<p style="text-align: right;">24</p> <p>1 Q Just briefly, what were the small 2 claims cases? 3 A Car accident, you know, petty stuff. 4 Q Okay. Do you -- for your solo 5 practice did you maintain an office outside of 6 your home, or was your office -- did you have a 7 home office? 8 A I started out by -- I bought a house 9 many years ago before I was married, so I 10 started out living in that house and working 11 out of that house. But then it was only about 12 a year after I bought the house that I got 13 married, and my wife owned a house and so I 14 moved in with her and kept the other house as 15 my place of work. 16 Q So where is the first house that you 17 bought? 18 A In Floral Park. 19 Q In Floral Park? 20 A Yeah. 21 Q And you said you still maintain that 22 house today? 23 A Yes, I do. I bought that house in 24 1981, I still have it. 25 Q And the house that you reside in, is</p>

<p style="text-align: right;">25</p> <p>1 that Arbor Street?</p> <p>2 A Yes.</p> <p>3 Q That's your current residence?</p> <p>4 A Uhm hum.</p> <p>5 Q With respect to your files pertaining</p> <p>6 to your work, are those kept in the Floral Park</p> <p>7 house?</p> <p>8 A Yes.</p> <p>9 Q What about personal files, are those</p> <p>10 kept in the Floral Park house or in the Great</p> <p>11 Neck house?</p> <p>12 A Largely in Floral Park. Not</p> <p>13 entirely, but largely. My wife is a</p> <p>14 thrower-awayer. She hates to keep anything.</p> <p>15 And me, I'm the exact opposite.</p> <p>16 Q You're a pack rat?</p> <p>17 A I wouldn't go that far, but</p> <p>18 approaching that to some degree.</p> <p>19 Q You said your personal files are</p> <p>20 largely at the Floral Park house?</p> <p>21 A Right.</p> <p>22 Q What personal files do you keep in,</p> <p>23 ah -- well, you said -- I'm sorry.</p> <p>24 You said your personal files are largely</p> <p>25 at the Great Neck house?</p>	<p style="text-align: right;">27</p> <p>1 A I get I would say well more than</p> <p>2 90 percent of all of my mail goes to a PO box</p> <p>3 in Great Neck. At the Great Neck Post Office.</p> <p>4 Including my banking statements.</p> <p>5 Q Why do you have a PO box?</p> <p>6 A Well, one is because I can get my</p> <p>7 mail at 9 o'clock in the morning instead of</p> <p>8 4 o'clock in the afternoon. That's one reason.</p> <p>9 That was an important reason.</p> <p>10 And it just -- I was losing some mail here</p> <p>11 and there when it came to the house. There was</p> <p>12 too much -- too much going on at the house</p> <p>13 where I was expecting pieces of mail and they</p> <p>14 wouldn't show up, and I wasn't there to get it</p> <p>15 when the mail came.</p> <p>16 Q This is you're talking about the</p> <p>17 Floral Park?</p> <p>18 A Great Neck.</p> <p>19 Q Oh, the Great Neck house.</p> <p>20 A In Great Neck. I wasn't there to get</p> <p>21 it when the mail came and then I would be</p> <p>22 wondering what happened to the piece of mail I</p> <p>23 was anticipating. It was just -- it was just</p> <p>24 better all around to get it at the PO box,</p> <p>25 that's all. It was just convenient and</p>
<p style="text-align: right;">26</p> <p>1 A No, the opposite.</p> <p>2 Q Oh, they are largely at the Floral</p> <p>3 Park house. So I was correct on that?</p> <p>4 A Right.</p> <p>5 Q Your personal files?</p> <p>6 A Yes.</p> <p>7 Q Okay. So what personal files do you</p> <p>8 keep at the Great Neck house?</p> <p>9 A Oh, files pertaining to credit card</p> <p>10 statements and my passport, you know. I don't</p> <p>11 know that these necessarily rise to the level</p> <p>12 of characterizing them as files, but just</p> <p>13 everyday things that I use on a daily basis</p> <p>14 that I need every day just in my personal life</p> <p>15 every day. Things that are less needed I store</p> <p>16 away in the other place.</p> <p>17 Q What about banking records, where</p> <p>18 would you keep those?</p> <p>19 A Banking records, I'm -- in Floral</p> <p>20 Park, yeah.</p> <p>21 Q Do you receive -- generally speaking,</p> <p>22 do you receive bank account statements?</p> <p>23 A I do, yeah, sure.</p> <p>24 Q Do those statements go to the Floral</p> <p>25 Park house or the Great Neck house?</p>	<p style="text-align: right;">28</p> <p>1 efficient and I prefer it.</p> <p>2 Q And did you have both business and</p> <p>3 personal mail go to the PO box?</p> <p>4 A Definitely. The only address I use</p> <p>5 for business mail was the PO box. That's the</p> <p>6 address on my letterhead.</p> <p>7 Q And you would go to the PO box, pick</p> <p>8 up the mail and typically bring it to the</p> <p>9 Floral Park house?</p> <p>10 A Typically.</p> <p>11 Q Okay. But any banking statements</p> <p>12 that would come in, they would come in to the</p> <p>13 PO box as well?</p> <p>14 A Yes.</p> <p>15 Q And you would bring those to the</p> <p>16 Great Neck house?</p> <p>17 A No.</p> <p>18 Q Those go to the Floral Park house?</p> <p>19 A Right.</p> <p>20 Q Other than the Citibank accounts at</p> <p>21 issue in this lawsuit have you ever held any</p> <p>22 other savings or checking accounts?</p> <p>23 A Sure.</p> <p>24 Q Have you ever held any savings or</p> <p>25 checking accounts with Citibank?</p>

<p style="text-align: right;">29</p> <p>1 A No.</p> <p>2 Q What other banks have you held</p> <p>3 savings or checking accounts with?</p> <p>4 A At any time? Some of these banks</p> <p>5 don't exist anymore, if you go back far enough.</p> <p>6 Q If you can remember.</p> <p>7 A With all of the mergers and all of</p> <p>8 that stuff.</p> <p>9 Q Right.</p> <p>10 A Immigrant, Dime of Williamsburgh,</p> <p>11 Capital One, Chase, Flushing Savings Bank,</p> <p>12 Roslyn Savings Bank which is now part of New</p> <p>13 York Community Bank. State Bank of Long</p> <p>14 Island, ah -- what else. There are some</p> <p>15 others.</p> <p>16 Q As of October 2010 did you have any</p> <p>17 other savings or checking accounts?</p> <p>18 A Yes.</p> <p>19 Q Do you recall what banks those</p> <p>20 accounts were with?</p> <p>21 A Flushing Savings Bank, Capital One,</p> <p>22 Bank of America, I think that was it. Possibly</p> <p>23 Chase, maybe. I don't remember.</p> <p>24 Q And, again, as of October 2010 what</p> <p>25 about credit card accounts?</p>	<p style="text-align: right;">31</p> <p>1 account.</p> <p>2 Q Do you recall whether either the</p> <p>3 Capital One, the Flushing account or the Bank</p> <p>4 of America account was governed by an</p> <p>5 agreement?</p> <p>6 A Do I recall whether it was governed</p> <p>7 by an agreement -- no.</p> <p>8 Q Do you recall receiving an agreement</p> <p>9 or terms and conditions governing those</p> <p>10 accounts when you opened those accounts?</p> <p>11 A No.</p> <p>12 Q Do you have any reason to believe</p> <p>13 that those accounts were not governed by an</p> <p>14 agreement?</p> <p>15 MR. SPORN: Objection to the form.</p> <p>16 Speculative, vague.</p> <p>17 THE WITNESS: I would assume that any</p> <p>18 account I have with any entity, banking or</p> <p>19 otherwise, is governed by some agreement,</p> <p>20 but did I ever receive such, no.</p> <p>21 Q Do you recall reviewing an agreement</p> <p>22 from either Capital One, Flushing or Bank of</p> <p>23 America?</p> <p>24 A No, I recall not reviewing. That's</p> <p>25 what I recall.</p>
<p style="text-align: right;">30</p> <p>1 A Credit card accounts, uhm, I probably</p> <p>2 had a Citi credit card. I probably had a Chase</p> <p>3 credit card. I say probably, because I have</p> <p>4 had those throughout the years at one time or</p> <p>5 another usually. I usually have it.</p> <p>6 I think I -- I believe at that time I had</p> <p>7 a US Bank credit card as well. And Capital</p> <p>8 One. And Capital One. Barclays I might have</p> <p>9 had then, maybe. I have had Barclays from time</p> <p>10 to time, I just can't -- I don't remember</p> <p>11 precisely what I had in 2010 as opposed to 2009</p> <p>12 or 2011.</p> <p>13 Q Sure. With respect to the bank</p> <p>14 accounts, and I think you said Capital One,</p> <p>15 Flushing Savings and Bank of America, do you</p> <p>16 still hold those accounts today?</p> <p>17 A All but Flushing. I do not in</p> <p>18 Flushing.</p> <p>19 Q Do you recall when you closed the</p> <p>20 Flushing Savings account?</p> <p>21 A That was in March of 2013. That was</p> <p>22 a checking account, it wasn't a savings</p> <p>23 account. I have had savings account at</p> <p>24 Flushing, but I didn't -- when that</p> <p>25 relationship ended it was only a checking</p>	<p style="text-align: right;">32</p> <p>1 MR. STRAUSS: Can we go off the</p> <p>2 record.</p> <p>3 (Off the record.)</p> <p>4 MR. STRAUSS: Back on.</p> <p>5 Can you read back the last question</p> <p>6 and answer.</p> <p>7 (The prior question and answer was read back by</p> <p>8 the reporter.)</p> <p>9 Q So I assume you don't recall whether</p> <p>10 any of those agreements contained an</p> <p>11 arbitration clause?</p> <p>12 A I never saw an agreement, so I</p> <p>13 wouldn't know one way or the other.</p> <p>14 Q When you say you never saw an</p> <p>15 agreement from those three banks, are you</p> <p>16 saying you don't recall seeing it or they did</p> <p>17 not provide you with one?</p> <p>18 A I know that I was not provided with</p> <p>19 an agreement by any one of those entities.</p> <p>20 Q How do you know you were not provided</p> <p>21 with an agreement by Capital One?</p> <p>22 MR. SPORN: Objection to the form of</p> <p>23 the question.</p> <p>24 THE WITNESS: Well, it's like --</p> <p>25 okay, it's like asking whether I know</p>

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1 whether somebody is pregnant or not.
 2 But look, I have very meticulous
 3 records. I keep everything. I have
 4 records going back a couple of decades,
 5 which should go in the garbage, of bank
 6 accounts and bank statements of banks that
 7 no longer exist. Why I have it, I
 8 couldn't tell you, but it's just stupidity
 9 on my part, but in any event, I have very
 10 careful records and I know what I have are
 11 my account opening documents, and they
 12 never included an agreement.
 13 Q So Capital One never included an
 14 agreement?
 15 A No.
 16 Q And Flushing Savings never included
 17 an agreement?
 18 A No.
 19 Q And Bank of America never included a
 20 agreement?
 21 A Bank of America is a different animal
 22 for me. Meaning, that I have a bank account
 23 there through a brokerage account. In other
 24 words, I have a Merrill Lynch account and Bank
 25 of America owns Merrill Lynch.

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1 Q Okay.
 2 A So I have -- I have a bank -- I have
 3 a checking account, I do not have a savings
 4 account, I have a checking account that's a
 5 Bank of America checking account, but it's
 6 through Merrill Lynch.
 7 And so of course when I opened that
 8 through the brokerage, I got extensive SEC
 9 required, ah, you know, terms and conditions
 10 for the brokerage account.
 11 MR. SPORN: Counselor, we have a
 12 direction from the Second Circuit as to
 13 the issue, the issues in this case.
 14 You may inquire very, very broadly as
 15 you have done in the last hour, but
 16 fishing around for other accounts and
 17 other pieces of paper is not following the
 18 Second Circuit direction and mandate. So
 19 I'm going to ask you to stop at this
 20 point.
 21 MR. STRAUSS: I disagree with your
 22 objection and I'm going to continue.
 23 MR. SPORN: Go ahead and continue.
 24 You have my objection.
 25 MR. STRAUSS: I have it.

35

1 Q When did you open the Capital One
 2 account?
 3 A Capital One, that would have been
 4 2008, I believe.
 5 Q And have you kept all of the records
 6 from the Capital One account?
 7 A Absolutely.
 8 Q And you know that they did not
 9 provide you with an agreement because an
 10 agreement is not in those records?
 11 A I know, because, number one, when I
 12 opened the account I know exactly what I did
 13 and who I did it with. And they did not
 14 provide me with that. Number two, I also know
 15 it from my records.
 16 Q And would the same answer that you
 17 just gave for Capital One, would that also
 18 apply to Flushing Savings?
 19 A Yes.
 20 Q And --
 21 A Well, not with respect to the year
 22 that I opened the account.
 23 Q No, no, just with respect to the
 24 agreement.
 25 A Right.

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1 Q And what year did you open the
 2 Flushing Savings?
 3 A Ah --
 4 Q And when I say Flushing, I'm not
 5 saying savings account.
 6 A Savings Bank, yeah. Flushing Savings
 7 Bank. You know, Flushing Savings Bank has been
 8 in the community near where I live for decades
 9 and I have had different accounts there at
 10 different times. Sometime in the 1990s I would
 11 say.
 12 Q And you said you had opened the Bank
 13 of America account through a brokerage?
 14 A Right.
 15 Q When did you open that account?
 16 MR. SPORN: I'm going to repeat my
 17 objection, and I'm also going to move to
 18 strike your continuing questions in this
 19 area.
 20 The Second Circuit told us what we
 21 had for January 27th. So far it's now
 22 five after eleven, you have not asked him
 23 one question about Citibank, his activity
 24 at Citibank, whatever he did at Citibank
 25 with regard to this promotional offer that

<p style="text-align: right;">37</p> <p>1 Citibank made. And, sir, I think you are</p> <p>2 going way, way afield and I move to strike</p> <p>3 your previous questions.</p> <p>4 Q With respect to the Bank of America</p> <p>5 account, where do you keep those files?</p> <p>6 A Floral Park.</p> <p>7 Q Do you ever recall ever declining to</p> <p>8 open a bank account because the agreement</p> <p>9 governing the account contained an arbitration</p> <p>10 clause?</p> <p>11 A No. Well, just to be clear about</p> <p>12 that, I never saw one with an arbitration</p> <p>13 clause to even consider whether to decline or</p> <p>14 not.</p> <p>15 MR. STRAUSS: Can you please mark</p> <p>16 this as Hirsch Exhibit 1.</p> <p>17 (Exhibit 1 marked for</p> <p>18 identification.)</p> <p>19 Q Mr. Hirsch, can you please take a</p> <p>20 look at what has been marked as Hirsch</p> <p>21 Exhibit 1.</p> <p>22 A Okay.</p> <p>23 Q Have you ever seen this document</p> <p>24 before?</p> <p>25 A Yes.</p>	<p style="text-align: right;">39</p> <p>1 Hirsch, a semi-retired attorney, was very</p> <p>2 careful in his dealing with Citibank and was</p> <p>3 clear in his declaration as to the actual</p> <p>4 documents he received from Citibank."</p> <p>5 Do you agree with the statement that you</p> <p>6 were very careful in your dealing with</p> <p>7 Citibank?</p> <p>8 A Yes.</p> <p>9 Q Okay.</p> <p>10 A I mean, you know, I don't know how to</p> <p>11 evaluate that sentence in terms of time. You</p> <p>12 know, dealing -- what, when I was opening the</p> <p>13 account? Subsequent to opening the account?</p> <p>14 You know, if that, ah, if that statement</p> <p>15 there is referring to when I was dealing, you</p> <p>16 know, face to face with Citibank personnel in</p> <p>17 opening the account, uhm, careful, I don't know</p> <p>18 what -- I'm not sure what the word "careful"</p> <p>19 denotes in that context.</p> <p>20 I mean, I walked into the bank, I sat</p> <p>21 down, I said I want to open an account, and we</p> <p>22 went through the process.</p> <p>23 Q Okay.</p> <p>24 A I was as careful as I would normally</p> <p>25 be in any business transaction, making sure</p>
<p style="text-align: right;">38</p> <p>1 Q What is it?</p> <p>2 A It is the Appellees' Brief in the</p> <p>3 lawsuit that you're currently taking the</p> <p>4 deposition in that was presented to the Second</p> <p>5 Circuit US Court of Appeals in July of 2013.</p> <p>6 Q Have you ever read it?</p> <p>7 A I skimmed it.</p> <p>8 Q If you could turn to page 12.</p> <p>9 A I did not read it as I would if I</p> <p>10 were not the client.</p> <p>11 Q If you were arguing the case?</p> <p>12 A If I were arguing the case, or if I</p> <p>13 were the practitioner who had to write it or</p> <p>14 edit it, or anything like, you know --</p> <p>15 I did not read it as a lawyer, okay, with</p> <p>16 my typical meticulous lawyering skills. I</p> <p>17 didn't do that.</p> <p>18 Q I understand.</p> <p>19 A Go ahead.</p> <p>20 Q If you could turn to page 12.</p> <p>21 A Yeah. Go ahead.</p> <p>22 Q The first full paragraph, the last</p> <p>23 sentence.</p> <p>24 A Yeah.</p> <p>25 Q It says: "However, Appellee Bertram</p>	<p style="text-align: right;">40</p> <p>1 that I was getting what I came in the bank to</p> <p>2 get, you know.</p> <p>3 Q Okay. On October 25th, 2010 did you</p> <p>4 open certain accounts with Citibank?</p> <p>5 A I did.</p> <p>6 Q Do you recall what types of accounts</p> <p>7 you opened on October 25, 2010?</p> <p>8 A A checking account and a savings</p> <p>9 account.</p> <p>10 MR. STRAUSS: Let's mark another</p> <p>11 exhibit.</p> <p>12 (Exhibit 2 marked for</p> <p>13 identification.)</p> <p>14 Q Have you ever seen this document</p> <p>15 before, Mr. Hirsch?</p> <p>16 A The first time I ever saw this</p> <p>17 document was two days ago when it was</p> <p>18 introduced as an exhibit at Mrs. Saffier's</p> <p>19 (phonetic) deposition.</p> <p>20 Q Did you see it at Michael Ashley's</p> <p>21 deposition?</p> <p>22 A I don't recall seeing it there. I</p> <p>23 don't remember whether that was an exhibit</p> <p>24 there. It probably was, but I don't remember</p> <p>25 that.</p>

<p style="text-align: right;">41</p> <p>1 Q If you could look under "Account 2 Type", sort of the upper third of the page, it 3 says: "Regular Checking and Savings Plus 4 Account." 5 A I'm not quite focusing on that yet. 6 Where is that now? 7 Q It's under sort of the first line. 8 A Oh, I see. Within the number 1 and 9 the 2, is that what you're talking about? 10 Q That's it. 11 A Yeah, okay. Regular Checking, and 12 the number 2 is Savings Plus Account, yeah. 13 Q Are those the accounts you opened on 14 October 25th, 2010 at Citibank? 15 A Yes. 16 Q Have you ever heard the term "deposit 17 account"? 18 A Yes. 19 Q Do you know what a deposit account 20 is? 21 A My understanding is that's a savings 22 account and not a checking account. 23 Q What does the word "deposit" mean to 24 you? 25 A Putting something into something</p>	<p style="text-align: right;">43</p> <p>1 A Well, I do not believe -- first of 2 all, I like to do business face to face. I do 3 not like to open -- I have opened accounts over 4 the Internet and over the phone, but I don't 5 prefer that. I have only done that when I 6 couldn't do it in person because the entity 7 that I was dealing with didn't have a local 8 place for me to go in person. But if I can do 9 things face to face, I'm old fashioned, I like 10 to do that. 11 But the other reason, of course, is that 12 I, as you know, I had a promotional offer that 13 relates to these accounts having to do with 14 securing American Airlines frequent flyer miles 15 in relation to these account openings, and I 16 don't recall at this time that there was an 17 option to do that by phone or Internet. I 18 think it had to be done in the bank. 19 Q You said you have in the past opened 20 accounts via Internet or phone. Do you recall 21 what accounts those were? 22 A Invariably I would say CDs. 23 Q So those were not the Capital One, 24 the Flushing Savings or Bank of America 25 accounts?</p>
<p style="text-align: right;">42</p> <p>1 else. 2 Q That's good. 3 A It doesn't need to be money, it 4 doesn't need to be a bank account. 5 Q Do you know whether you can deposit 6 money into a checking account? 7 A Yes, you can. 8 Q And do you know whether you can 9 deposit money into a savings account? 10 A Yes, you can. 11 Q And did you, in fact, deposit funds 12 into the Regular Checking and Savings Plus 13 Account on October 25, 2010? 14 A Yes. 15 Q Now on October 25th, 2010 you opened 16 up your accounts at the Great Neck branch? 17 A Correct. 18 Q And you did it in person? 19 A I did. 20 Q Why did you choose to open up the 21 accounts in person? 22 A As opposed to what? How else do you 23 open an account? 24 Q By the Internet, maybe over the 25 phone.</p>	<p style="text-align: right;">44</p> <p>1 A Capital One, yes. 2 Q Okay. 3 A I mean, I do have checking and 4 savings account at Capital One, but I also have 5 CDs. 6 Q Okay. 7 A And the CDs were opened entirely both 8 online and over the phone. 9 Q And the -- 10 A And that, by the way, let me just -- 11 Q Sure. 12 A -- point out to you, I mean, not that 13 it matters really, but just as a clarification, 14 that Capital One only recently acquired 15 branches in New York. It was not a bank that 16 had branches in New York until just recently, 17 in the last several years. 18 And so prior to that they were 19 headquartered and still are headquartered in 20 Virginia. And if you want to do business with 21 them, you have to deal with them over the phone 22 or by Internet through their offices in 23 Virginia. 24 Q Do you recall after -- when you 25 opened the Capital One account, do you recall</p>

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1 receiving any sort of mailing from them
2 containing literature with respect to the
3 account after you opened it?
4 A I got a mailing from them with, ah --
5 Well, first of all, I had to submit an
6 application through the mail even as a
7 confirming kind of a thing after opening the
8 account online and over the phone. It was
9 paperwork I had to actually physically sign and
10 send back. And then I -- which they mailed to
11 me, they mailed to me what I needed to sign and
12 send back. And then they ultimately, not long
13 after, mailed me the certificate of deposit.
14 And sure, those certificates of deposit came
15 with terms and conditions.
16 Q In the mail?
17 A In the mail.
18 Q And those were --
19 A None of which I -- as far as I
20 recall, were available online. It was only
21 what I got in the mail, but it was part of the
22 account opening process.
23 Q And you filed those terms and
24 conditions in the Floral Park home?
25 A Yeah.

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1 Q On October 25th, 2010 do you recall
2 what time of day you went to the Great Neck
3 branch?
4 A In the morning. Late in the morning
5 I would say.
6 Q Did you previously call for an
7 appointment?
8 A No.
9 Q Did you go to the branch alone or was
10 somebody with you?
11 A Alone.
12 Q Prior to October 25th, 2010 had you
13 been to Citibank's Great Neck branch
14 previously?
15 A Occasionally.
16 Q And what was the purpose of prior
17 visits to the Citibank branch?
18 A Every now and again I found it to be
19 convenient or whatever to pay my Citi credit
20 card bill there, monthly bill. I would go in
21 and just go over to the teller and pay the
22 credit card bill. I have had a Citi credit
23 card on and off over many years.
24 Q Okay.
25 A And but oftentimes I would pay the

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1 bill online, too. So, yes, I stepped in there
2 occasionally.
3 Q Do you recall any -- was there a
4 particular teller whom you would go to?
5 A No. No, you go on line and --
6 usually there is really no line, maybe one
7 person in front of me and then whoever was next
8 there.
9 Q Okay.
10 A I didn't get to know any of those
11 tellers. Not like -- not like Capital One
12 where I go on a very regular basis, and
13 everybody in the bank knows me in the branch I
14 go to. But at Citibank, no. I didn't know
15 anybody there and they didn't know me.
16 Q After October 25th, 2010 did you get
17 to know any of the Citibank personnel at the
18 Great Neck branch?
19 A Depends on what you mean by "get to
20 know".
21 Q Well, did you interact with them more
22 where they knew you if you were to walk in?
23 A Oh, no. Definitely not.
24 Q And so on --
25 MR. STRAUSS: Actually, maybe we

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1 could take a five-minute break.
2 (Recess.)
3 MR. STRAUSS: Okay, back on.
4 Q Mr. Hirsch, when you first walked
5 into the Great Neck branch on October 25th,
6 2010 what did you do?
7 A What did I do -- I walked in and they
8 have a person there at a podium a few feet
9 inside the door. Who I don't know the title
10 of, but I would generically call the person a
11 "greeter" for lack of a better description, who
12 asked me what I needed in the bank that day.
13 And I said I came to open an account. And I
14 believe, if I remember correctly, that I had to
15 wait for one other person to be finished with
16 whatever transaction that person was doing, and
17 then I was -- I was taken next, maybe within
18 five to ten minutes.
19 Q And who at the Great Neck branch
20 assisted you with opening your accounts?
21 A Michael Ashley.
22 Q Had you ever met Michael Ashley
23 before?
24 A Never.
25 Q Had you ever spoken with Michael

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1 Ashley before?
2 A No. Nor since that day, either.
3 Q Okay.
4 A Until we met at the deposition last
5 week, but no.
6 Q Did anyone else at the Citibank
7 branch assist you with opening your account on
8 October 25th, 2010?
9 A No.
10 Q Where in the branch did you open your
11 accounts?
12 A In Mr. Ashley's office.
13 Q Did Mr. Ashley have his own office?
14 A Yes, he did.
15 Q Was there a desk in his office?
16 A Yes. I sat on one side, he sat on
17 the other side. My back was to the door, his
18 face was facing the door.
19 Q What else do you remember about
20 Mr. Ashley's office -- was there a computer in
21 the room?
22 A Sure.
23 Q Did you notice any papers or files in
24 the room?
25 A He had a file cabinet right behind

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1 by this mailing that I had, and I handed him
2 the mailing.
3 Q And after you handed him the mailing
4 what did he say to you?
5 A Well, he proceeded to read it. He
6 proceeded to read the backside of it, in
7 particular, which spells out for the banker,
8 you know, what the terms and conditions are of
9 the offer and what the banker needs to do to
10 assist the customer in fulfilling the terms and
11 conditions of that offer.
12 Q Okay.
13 A So he read it and then he proceeded
14 to carry through with opening the accounts.
15 Q And while he was doing that did he
16 say anything to you?
17 A You know, I'm sure we had some small
18 talk going back and forth, but I have no memory
19 of that.
20 Q Do you recall Michael Ashley asking
21 you any questions during the account opening
22 process?
23 A Sure, questions about can I have your
24 picture ID, you know. I mean all of the
25 routine things that are necessary to opening an

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1 his desk chair against the wall behind him.
2 Q Were there any papers on his desk?
3 A Yes, there were.
4 Q Do you remember what papers those
5 were?
6 A Not at all.
7 Q How long --
8 A It's not a matter of remembering what
9 they were, I don't think I ever knew what they
10 were. I didn't look at them.
11 Q How long did the account opening
12 process take from start to finish?
13 A I believe that it was anywhere from
14 20 to 25 minutes. It certainly wasn't more
15 than that. It was very routine and very fast.
16 Q So when you first sat down with
17 Michael Ashley did he say anything to you?
18 A Well, he said hello and what can I
19 help you with. I mean, not those exact words,
20 but that was the essence of it.
21 And I told him I have this Citibank
22 mailing that I received offering American
23 Airlines miles as part of the process of having
24 a savings and a checking account. And I said I
25 wanted to open the accounts that are required

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1 account. My Social Security number, et cetera.
2 He asked me those basic account opening kinds
3 of questions.
4 Q Anything else you can remember about
5 your conversation with --
6 A No.
7 Q -- Mr. Ashley?
8 A No.
9 Q Did you make any notes about your
10 conversation with Mr. Ashley?
11 A I did not.
12 Q Did you sign anything when you opened
13 your account?
14 A Sure.
15 Q What did you sign?
16 A The signature card.
17 MR. STRAUSS: Let's mark this as
18 Hirsch number 3.
19 (Exhibit 3 marked for
20 identification.)
21 MR. SPORN: Just give the Bates
22 number for the record.
23 MR. STRAUSS: What has been marked as
24 Hirsch number 3 is Bates number
25 CITI-000080.

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1 THE WITNESS: (Reviewing document.)
2 Q I take it you recognize this
3 document?
4 A I do.
5 Q Is that your signature on this
6 document?
7 A Yes, it is. One of my better ones.
8 Q And you remember signing the
9 signature card?
10 A Yes.
11 Q Do you remember Michael Ashley
12 presenting you with the signature card?
13 A Yes.
14 Q Did Michael Ashley say anything to
15 you when he gave you the signature card?
16 A He said to me that I needed to sign
17 this. This was -- this would have been toward
18 the end of the process of opening the account.
19 Or I should say accounts. Plural.
20 Q Did Mr. Ashley say anything else when
21 he gave you the signature card?
22 A Regarding the signature card itself?
23 Q Yes.
24 A No, not that I can recall.
25 Q Did you ask Michael Ashley any

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1 anything about that. We had no discussion
2 about that whatsoever.
3 Q Did you ever ask Michael Ashley for a
4 copy of any agreement that is referenced in the
5 signature card?
6 A I did not.
7 Q Were you shown any other documents
8 during the account opening process?
9 A You mean other than the signature
10 card?
11 Q Other than the signature card.
12 A Yeah, there was a -- there were --
13 you have them. There were a couple of other
14 documents that deal with the, ah -- with each
15 account. Showing the, ah, you know, the
16 account numbers and the deposit that I made to
17 open each account.
18 I don't recall the titles of those
19 particular documents, but, yes, of course he
20 handed me -- he handed me back to take home
21 with me the account opening documents for each
22 account.
23 Q Were the account opening documents in
24 a folder?
25 A No, they were not.

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1 questions about the signature card before you
2 signed it?
3 A I did not ask him any questions about
4 the signature card. I did ask him some
5 questions about the promotion, though, because
6 I had a particular concern.
7 Q And when you say you did not ask
8 Mr. Ashley any questions about the signature
9 card, does that include both before you signed
10 the signature card and after you signed the
11 signature card?
12 A No, I did not ask him any questions
13 about the signature card. I looked at it, I
14 read it and I signed it and I handed it back to
15 him.
16 Q Do you see on the signature card
17 toward the top of the page where it says "By
18 signing below, I (1) certify my tax status, (2)
19 agree to be bound by any agreement governing
20 any account opened in the title indicated on
21 this card"?
22 A Yes.
23 Q Did you ask Michael Ashley what the
24 "any agreement" referenced in this card was?
25 A I did not. Nor did he volunteer

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1 Q So they were separately clipped, I
2 guess?
3 A Separate pieces of paper, yes.
4 Q Separate pieces of paper.
5 A 8 1/2 x 11, just like this one.
6 MR. STRAUSS: Let's take a look at
7 another exhibit.
8 (Exhibit 4 marked for
9 identification.)
10 Q Mr. Hirsch, do you recognize this
11 document?
12 A I do.
13 Q What is it?
14 A It is a declaration that I signed on
15 April 12 of 2012. And that was filed in this
16 lawsuit as a filing that was made in April of
17 2012 as part of some larger filing.
18 Q And did you review this document
19 before you signed it?
20 A I certainly did.
21 Q If you could look at paragraph 15 of
22 the declaration on page 3.
23 A Okay.
24 Q It lists a number of documents that,
25 it says "Citibank gave to me."

<p style="text-align: right;">57</p> <p>1 A Uhm hmm.</p> <p>2 Q Do you see that?</p> <p>3 A Yes, I do.</p> <p>4 Q Are the documents listed in paragraph</p> <p>5 15 the documents you received on October 25th,</p> <p>6 2010 at the branch?</p> <p>7 A Yes.</p> <p>8 Q And these are the documents that</p> <p>9 Michael Ashley handed you during the account</p> <p>10 opening process at the branch?</p> <p>11 A Yes.</p> <p>12 Q Did you receive any other documents</p> <p>13 that day at the branch?</p> <p>14 A No.</p> <p>15 Q Now when Michael Ashley handed you</p> <p>16 these documents did you review them?</p> <p>17 A Actually, I would say no to "b, c"</p> <p>18 and "d"; but yes to "a".</p> <p>19 Q So at the time that Michael Ashley</p> <p>20 handed you "a" --</p> <p>21 And that's described in your declaration</p> <p>22 as a document entitled "Citi Products Opened/</p> <p>23 Applied For Today", and then in parenthesis it</p> <p>24 says: "(This document is your basic account</p> <p>25 opening document showing the amount deposited</p>	<p style="text-align: right;">59</p> <p>1 there to secure a Checking Plus account nor was</p> <p>2 I there to secure a Home Equity Line of Credit,</p> <p>3 so I just virtually summarily said I'm not</p> <p>4 interested in those. So I declined them and I</p> <p>5 didn't bother to read it.</p> <p>6 And as far as the Citibank's Privacy</p> <p>7 Notice is concerned, no, I did not read that.</p> <p>8 I have read numerous privacy notices over the</p> <p>9 years, I assumed it was more or less in the</p> <p>10 same vein as so many others and I did not sit</p> <p>11 there and read that, no.</p> <p>12 Q The declaration also says in that</p> <p>13 same paragraph 15 that you kept all of the</p> <p>14 papers Citibank gave to you.</p> <p>15 These documents, these were kept at the</p> <p>16 Floral Park home?</p> <p>17 A Yes.</p> <p>18 Q Where in the Floral Park home did you</p> <p>19 keep these documents?</p> <p>20 A I have a file of banking records, and</p> <p>21 it's in my file of banking records. File</p> <p>22 drawer, I should say.</p> <p>23 Q Did these documents go into a file</p> <p>24 that was labeled "Citibank Accounts"?</p> <p>25 A I put it in my own folder and labeled</p>
<p style="text-align: right;">58</p> <p>1 and the account numbers.)</p> <p>2 -- you reviewed that document when he</p> <p>3 handed it to you at the branch?</p> <p>4 A Yes, because that was the critical</p> <p>5 document for me just to confirm that an account</p> <p>6 was opened with the amount that I deposited in</p> <p>7 each one. And I just wanted to make sure that,</p> <p>8 you know, what I expected was going to occur,</p> <p>9 did, in fact, occur.</p> <p>10 Q And how long would you say you spent</p> <p>11 reviewing -- I will call it the "Citi Products</p> <p>12 Opened/Applied For Today" document?</p> <p>13 A A minute.</p> <p>14 Q A minute?</p> <p>15 A I don't think it takes more than</p> <p>16 that.</p> <p>17 Q Now with respect to documents "b, c"</p> <p>18 and "d", did you ever review those documents?</p> <p>19 A Well, as you can see, I declined the</p> <p>20 Checking Plus account and I declined the Home</p> <p>21 Equity Line of Credit.</p> <p>22 So I didn't review -- when I said no</p> <p>23 earlier to your question that I didn't review</p> <p>24 it, what I meant is, uhm, I didn't read through</p> <p>25 the documents, because I knew that I wasn't</p>	<p style="text-align: right;">60</p> <p>1 it "Citibank".</p> <p>2 Q Aside from these four documents</p> <p>3 listed in the declaration, did you ever place</p> <p>4 any other documents into that Citibank folder?</p> <p>5 A Well, I had the -- I had the</p> <p>6 promotional offer for the miles, the American</p> <p>7 Airlines miles, I put that in there. And,</p> <p>8 uhm -- no. No.</p> <p>9 Q Did you put Citibank account</p> <p>10 statements in that?</p> <p>11 A Oh, yes, I did. Yeah, I did put</p> <p>12 Citibank account statements in there. Yes, I</p> <p>13 did. Thank you.</p> <p>14 Q How often did you access this</p> <p>15 Citibank file?</p> <p>16 A I didn't bother accessing it, except</p> <p>17 when the monthly statement came in I would just</p> <p>18 go there and put it in, and not worry about it</p> <p>19 again for another month.</p> <p>20 Q So approximately once a month you</p> <p>21 would --</p> <p>22 A Well, I mean, I didn't access it in</p> <p>23 terms of just putting another piece of paper</p> <p>24 into the file, but not actually pulling the</p> <p>25 file out and looking at it.</p>

<p style="text-align: right;">61</p> <p>1 Q How long do you keep the account 2 statements? 3 A Well, as I indicated to you earlier, 4 forever. I have got statements going back to 5 the 1960s. I mean, it's just idiocy on my 6 part, but, yes. I need to do a thorough 7 housecleaning, that's what I need to do. 8 Q So you don't recall ever throwing 9 away any documents that had been placed in the 10 Citibank file? 11 A I never did. I still have them. 12 Q Would anyone else have had access to 13 this Citibank file besides yourself? 14 A No. 15 Q Do you keep any documents relating to 16 your Citibank account anywhere else? 17 A No. 18 Q Not on a computer? 19 A No. 20 Q Did you review the documents in the 21 Citibank file in connection with this action? 22 A Sure. 23 Q Do you remember when? 24 A When? Ah, I would imagine that -- 25 well, I don't want to say "I imagine", I know</p>	<p style="text-align: right;">63</p> <p>1 A No. 2 MR. STRAUSS: Okay. 3 (Exhibit 5 marked for 4 identification.) 5 Q We've marked as Hirsch Exhibit 5, a 6 document bearing Bates number Bertram Hirsch-1 7 and Bertram Hirsch-11. 8 A (Referring to document.) 9 Q Mr. Hirsch, have you ever seen this 10 document before? 11 A Yes. 12 Q What is it? 13 A It is the item referenced in 14 paragraph 15(a) of the declaration in Hirsch 15 Exhibit 4 that Mr. Ashley handed to me at the 16 conclusion, or near the conclusion of our 17 account opening on October 25, 2010. 18 Q And this is one of the account 19 opening documents that you found in your file, 20 in your Citibank file? 21 A Yes. 22 Q Correct? 23 A Yes. I wouldn't say I found it. 24 Q It's in your file? 25 A It's in my file and I knew it was</p>
<p style="text-align: right;">62</p> <p>1 that I looked at them again when I received the 2 1099 in January of 2011. And of course I have 3 looked at it a number of times since in 4 relation to this litigation, and, ah -- and 5 even prior to my becoming involved in this 6 litigation. 7 Q Did you review the documents in the 8 Citibank file in connection with your 9 declaration? 10 A Yes, most definitely. 11 Q Did you review the documents in your 12 Citibank file in connection with responding to 13 any document requests from Citibank in this 14 action? 15 A Absolutely. 16 Q And did you review the documents in 17 the Citibank file in preparation for this 18 deposition? 19 A No. 20 Q Did you review any documents in 21 connection with your preparation for this 22 deposition? 23 A Do you mean review like in the last 24 24, 48 hours or something like that? 25 Q Sure.</p>	<p style="text-align: right;">64</p> <p>1 there. 2 Q Do you know why in the top of this 3 document it lists the PO Box number? 4 A Yeah. Do I know why? 5 Q Yeah. 6 A I do know why. 7 Q Why? 8 A Because I told Mr. Ashley that I 9 wanted to receive my mail at the PO box and not 10 at my physical address. But of course, you 11 know, with respect to account opening, I 12 believe the bank requires a physical address. 13 And the physical address is what's on my 14 driver's license as well, but I make it clear 15 not only to Mr. Ashley, but to others, that I 16 want to get my mail at the PO box. So that's 17 why. 18 Q Okay. Now in your declaration which 19 was the prior Exhibit 4, you described this 20 document as your basic account opening document 21 showing the amount deposited and the account 22 numbers? 23 A Yes. To me this was -- this was the 24 only document I ever needed, you know. As far 25 as I was concerned, this was the critical</p>

<p style="text-align: right;">65</p> <p>1 account opening document.</p> <p>2 Q And when you had opened other bank</p> <p>3 accounts previously did you also receive a</p> <p>4 document that looked like this?</p> <p>5 MR. SPORN: Note my objection,</p> <p>6 please. You're talking about other banks</p> <p>7 that he may have dealt with? Well, sir,</p> <p>8 again, my objection for reasons previously</p> <p>9 stated.</p> <p>10 MR. STRAUSS: You can answer.</p> <p>11 THE WITNESS: The answer is yes,</p> <p>12 except for -- if you want to turn the</p> <p>13 clock back in time -- except for when</p> <p>14 passbooks were given out.</p> <p>15 But statement accounts, this is</p> <p>16 typically what you get in a statement</p> <p>17 account.</p> <p>18 Q Are there any other types of</p> <p>19 documents that you would consider to be basic</p> <p>20 account opening documents?</p> <p>21 A Basic, no. This is the fundamental</p> <p>22 document that I think would be expected in</p> <p>23 opening up any account. I mean, at any bank.</p> <p>24 Q Can you give me an example of another</p> <p>25 type of document that you might consider to be</p>	<p style="text-align: right;">67</p> <p>1 Q If you could turn to page 2 of</p> <p>2 Exhibit 5.</p> <p>3 A Okay. Uhm hum.</p> <p>4 Q In the second paragraph after the</p> <p>5 three stars --</p> <p>6 A Right.</p> <p>7 Q -- in the second sentence it says:</p> <p>8 "As noted in your Client Manual, all</p> <p>9 deposits must be verified by bank personnel</p> <p>10 and, when credited, appear on your account</p> <p>11 statement."</p> <p>12 A Where are you reading?</p> <p>13 Q It's --</p> <p>14 A I don't see that. Tell me where</p> <p>15 you're reading.</p> <p>16 Q I hope you have the right document.</p> <p>17 A Oh, okay. Sorry. (Reviewing</p> <p>18 document.) Okay.</p> <p>19 Q And I believe you stated earlier that</p> <p>20 you reviewed this document, the CITI Products</p> <p>21 Opened/Applied For Today" document, at the time</p> <p>22 that Michael Ashley handed you the document?</p> <p>23 A Yes.</p> <p>24 Q Did you ever ask Mr. Ashley what the</p> <p>25 Client Manual referenced on page 2 of this</p>
<p style="text-align: right;">66</p> <p>1 a basic or fundamental account opening</p> <p>2 document?</p> <p>3 A Well, if you have a certificate of</p> <p>4 deposit, you get the certificate of deposit.</p> <p>5 That's a different kind of a document from the</p> <p>6 one that we are looking at here in Exhibit 5.</p> <p>7 But I mean it is -- it is quite similar in</p> <p>8 respect of giving the title of the account, the</p> <p>9 account number, and the amount on deposit. And</p> <p>10 those are the critical factors, it seems to me,</p> <p>11 in any basic account opening document.</p> <p>12 Q Would you consider --</p> <p>13 A That, and of course, you know, CDs</p> <p>14 have a term, so you get that, too, if you have</p> <p>15 a CD.</p> <p>16 Q Would you consider a document</p> <p>17 containing the terms and conditions applicable</p> <p>18 to the account to be a basic account opening</p> <p>19 document?</p> <p>20 A I would --</p> <p>21 MR. SPORN: Objection to the</p> <p>22 question.</p> <p>23 THE WITNESS: I do consider that to</p> <p>24 be a basic document if it's provided to</p> <p>25 me.</p>	<p style="text-align: right;">68</p> <p>1 document is?</p> <p>2 A I did not.</p> <p>3 Q Did you ask anyone else at the</p> <p>4 Citibank branch what the Client Manual is?</p> <p>5 A No.</p> <p>6 Q After receiving this document did you</p> <p>7 ever request a copy of the Client Manual at any</p> <p>8 time from anyone at Citibank?</p> <p>9 A No.</p> <p>10 Q Turn to page 1. Just one more on</p> <p>11 this document.</p> <p>12 A Okay.</p> <p>13 Q It says near the bottom of the page</p> <p>14 under "Total Checking, Savings, Retirement", it</p> <p>15 says: "You can access your accounts through</p> <p>16 www.citibankonline.com."</p> <p>17 Do you see that?</p> <p>18 A Yes, yes.</p> <p>19 Q Did you ever access your Citibank</p> <p>20 accounts online at www.citibankonline.com?</p> <p>21 A I did.</p> <p>22 Q You did. And when you accessed your</p> <p>23 Citibank accounts online, what did you do --</p> <p>24 what was the purpose of your accessing the</p> <p>25 accounts online?</p>

<p style="text-align: right;">69</p> <p>1 A Just to look at the statement</p> <p>2 basically, because the statement is available</p> <p>3 online before it arrives in the mail. And I</p> <p>4 didn't really care very much, frankly, about</p> <p>5 the, ah -- about the statements after the first</p> <p>6 one, but I wanted to look at the first one and</p> <p>7 make sure that it was exactly as I thought it</p> <p>8 ought to be.</p> <p>9 Q The first account statement?</p> <p>10 A The first account statement, yes.</p> <p>11 Q But you had also -- you also received</p> <p>12 physical mailings?</p> <p>13 A I did.</p> <p>14 Q Of the account statements in</p> <p>15 addition?</p> <p>16 A I did.</p> <p>17 Q Did you ever access or review the</p> <p>18 Client Manual online at www.citibankonline.com?</p> <p>19 A I did not.</p> <p>20 Q Did you ever access any documents or</p> <p>21 pages other than the account statements at the</p> <p>22 citibankonline.com site?</p> <p>23 A No.</p> <p>24 MR. STRAUSS: I'm marking as Hirsch</p> <p>25 Exhibit 6 --</p>	<p style="text-align: right;">71</p> <p>1 not this particular document that you have</p> <p>2 given us as document 6.</p> <p>3 So note my objection. And while you</p> <p>4 may continue on your questions, please</p> <p>5 note my continuing objection that this is</p> <p>6 not allegedly any alleged account document</p> <p>7 that was provided to Mr. Hirsch.</p> <p>8 MR. STRAUSS: Counsel, I don't</p> <p>9 understand that objection at all.</p> <p>10 And please do not interrupt with</p> <p>11 speeches, this is not the time or the</p> <p>12 place for it.</p> <p>13 MR. SPORN: Well, it's not a speech.</p> <p>14 You're showing him a document that</p> <p>15 one of your certified people to the Second</p> <p>16 Circuit said was not an alleged document</p> <p>17 shown to Mr. Hirsch. Now you're showing</p> <p>18 him a document dated July 1 rather than</p> <p>19 the January 1, and you're going to start</p> <p>20 asking him questions. I don't think</p> <p>21 that's fair.</p> <p>22 MR. STRAUSS: May I please continue</p> <p>23 with my questions now, counsel?</p> <p>24 MR. SPORN: Yes, please.</p> <p>25 MR. STRAUSS: Thank you.</p>
<p style="text-align: right;">70</p> <p>1 (Exhibit 6 marked for</p> <p>2 identification.)</p> <p>3 Q This is a document entitled "Client</p> <p>4 Manual Consumer Accounts Including Privacy</p> <p>5 Notice US Markets" effective July 1st, 2010.</p> <p>6 It bears Bates numbers CITI-0000155 through</p> <p>7 CITI-0000183.</p> <p>8 A (Referring to document.)</p> <p>9 Q Mr. Hirsch, have you ever seen this</p> <p>10 document before?</p> <p>11 A Yes.</p> <p>12 Q What is it?</p> <p>13 A Client Manual, Consumer Accounts,</p> <p>14 Citibank, July 1, 2000.</p> <p>15 Q And am I correct that you have</p> <p>16 asserted in this action that you did not</p> <p>17 receive a Client Manual when you opened your</p> <p>18 accounts on October 25th, 2010?</p> <p>19 A Correct.</p> <p>20 MR. SPORN: I just want to tell you</p> <p>21 one thing. Your Haslam declaration that</p> <p>22 went up to the Second Circuit said it was</p> <p>23 a January 2010 that was allegedly shown to</p> <p>24 Mr. Hirsch, and it was admitted later in</p> <p>25 your answer to interrogatories that it was</p>	<p style="text-align: right;">72</p> <p>1 Q Just to go back. Did you ever</p> <p>2 receive any Client Manual, whether it was</p> <p>3 effective July 1st, 2010 or effective on any</p> <p>4 other date?</p> <p>5 A No.</p> <p>6 Q Did you view or access any Client</p> <p>7 Manual at any other time?</p> <p>8 A Yes.</p> <p>9 Q In relation to this lawsuit?</p> <p>10 A Yes. The first time -- just to be</p> <p>11 clear, the first time I ever laid eyes on this</p> <p>12 document of whatever date, I don't know, but</p> <p>13 the first time I ever became aware of the</p> <p>14 existence of this document was when it was</p> <p>15 attached to a filing that you made in this</p> <p>16 litigation. And my attorney forwarded that</p> <p>17 filing to me and that's when I first saw that.</p> <p>18 It was some time in 2012.</p> <p>19 Q If you could turn to page 5 of the</p> <p>20 Client Manual.</p> <p>21 A Page 5.</p> <p>22 Q It bears Bates number CITI-0000157.</p> <p>23 A (Referring to document.)</p> <p>24 Q And under "General Terms", it says:</p> <p>25 "When you open a Citibank deposit account,</p>

<p style="text-align: right;">73</p> <p>1 you are agreeing that your account will be 2 governed by this Client Manual (sometimes 3 referred to as 'Manual'), and any and all 4 accompanying Marketplace Addenda, (sometimes 5 referred to as 'Addendum'). Together, the 6 Manual and Addendum are referred to as 7 'Agreement,' which contain important terms and 8 conditions, details, rules and procedures 9 applicable to each of your accounts." 10 Do you see that? 11 A I do. 12 Q Are you familiar with the word 13 "agreement"? 14 A Yes. 15 Q What does that word mean to you? 16 A It means something that arm's length 17 parties are bound by when they enter into a 18 transaction with each other. 19 Q And are you familiar with the words 20 "terms and conditions"? 21 A Yes. 22 Q What do those words mean to you? 23 A The provisions that are binding on 24 the parties to an agreement. 25 Q Would you agree that a customer who</p>	<p style="text-align: right;">75</p> <p>1 would have learned, Mr. Strauss, is that 2 the account, the savings account was 3 subject to this agreement. 4 But I also would have learned, at 5 least it's my view, that the checking 6 account was not. 7 Q Why would the checking account not be 8 subject to this agreement? 9 A Because somewhere else in this text, 10 which I'm not going to go hunting for at the 11 moment, there is language that says that it 12 pertains to a Checking Plus account. 13 (Reviewing document.) Oh, okay. 14 In the arbitration provision on page 44, 15 it says that this arbitration section "-- 16 regarding your deposit, Ready Credit, Checking 17 Plus or Checking Plus (variable rate) accounts 18 and the services related thereto." 19 As far as I was concerned, and still am 20 concerned, I opened up a regular checking 21 account and not a Checking Plus account. 22 So I would have -- so it was my view from 23 after this litigation began and after I got a 24 copy of this and reviewed it, it was my view 25 that the checking account was never subject to</p>
<p style="text-align: right;">74</p> <p>1 opens a Citibank deposit account and reviews 2 the Client Manual, particularly the sentences 3 we just read, would learn that their account is 4 governed by the Client Manual? 5 MR. SPORN: Objection to the form of 6 the question. 7 THE WITNESS: I don't know what a 8 customer would think. I know what I would 9 think as a lawyer. What your average 10 citizen who walks in the door with no 11 legal background would think, I couldn't 12 possibly tell you. 13 Q Well, you, as a lawyer reading the 14 sentences I just read, would you have learned 15 that your account is governed by the Client 16 Manual? 17 MR. SPORN: Objection to the form of 18 the question. 19 THE WITNESS: What I would have 20 learned, had I read this at the time of 21 opening my account, and if I had gone 22 through and sat there for the hours it 23 would take to read through -- how many 24 pages here, I don't know -- almost 50 25 pages of documents, of language, what I</p>	<p style="text-align: right;">76</p> <p>1 this at all. 2 Q So it's your view -- 3 A I mean, I understand that Citibank 4 has an opposite position on that, but I don't 5 read it the way Citibank reads it. 6 Q So just to kind of close the loop on 7 this -- 8 A Yeah. 9 Q It's your view that your checking 10 account that you opened on October 25th, 2010 11 is not a deposit account? 12 A Well, let's put it this way: 13 If it is a deposit account, it's not a 14 deposit account subject to this agreement, 15 subject to this Client Manual. But I'm not -- 16 but I'm not sure how Citibank -- 17 We went through this earlier in the 18 deposition where you asked me if I understood 19 the term "deposit". Oh, sure, I know what the 20 dictionary definition of "deposit" is. 21 How Citibank uses that term to apply it to 22 one or another of its accounts, I have no idea, 23 frankly. I don't know. But it seems to me, 24 from reading this, that the checking account is 25 not considered by Citibank to be a deposit</p>

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1 account.
2 Q Where does it say --
3 A And the savings account is.
4 Q Where does it say in the Client
5 Manual that Citibank does not consider a
6 checking account to be a deposit account?
7 A Well, I don't know. I would have to
8 go back and review this. If you know that
9 Citibank has a definition of "deposit" account
10 somewhere in here, perhaps you can direct me to
11 it. Or is it an undefined term? I don't
12 remember right now. It appears that it's an
13 undefined term.
14 Q Okay. Let's go back to where you led
15 me, it's page 44 of the Client Manual.
16 A (Referring to document.)
17 Q Do you see under "Disputes Covered by
18 Arbitration" --
19 A Yes.
20 Q It says: "Any claim or dispute
21 relating to or arising out of your deposit,
22 Ready Credit, Checking Plus or Checking Plus
23 (variable rate) account, this Agreement, or our
24 relationship, will be subject to arbitration."
25 Do you know what the word "relationship"

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1 means?
2 A Well, it's the relationship that,
3 ah -- what the word "relationship" means?
4 Q Yeah.
5 A The, uhm, transaction that, ah -- let
6 me think about how to define the term here.
7 The transaction that was entered into
8 between myself and Citibank that resulted in a
9 bank account.
10 And by the way, let me say this, too,
11 about your prior question about "deposit".
12 To my way of thinking, again as a lawyer,
13 when Citibank decides in this page 44
14 recitation of the arbitration provision to
15 single out Checking Plus and Checking Plus
16 variable rate, it seems to me that checking is
17 an identifiable product that required separate
18 iteration from the other iteration of deposit
19 account.
20 So there's no mention in here of regular
21 checking. So it -- isn't checking -- this is a
22 rhetorical question -- I'm just saying to my
23 way of thinking, isn't Checking Plus and
24 Checking Plus variable rate also a deposit
25 account? Why is it separated out? That's what

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1 leads me to my analysis that checking is not --
2 regular checking is not a deposit account, as
3 far as Citibank is concerned.
4 Q That's your analysis?
5 A That's my analysis.
6 Q As an attorney?
7 A That's my analysis as an attorney.
8 But, yeah.
9 Q If you could look at just Exhibit 1,
10 it's the Second Circuit brief.
11 A Sure. Go ahead.
12 Q Turn to page 21, footnote ten.
13 A Footnote -- oh, say that again,
14 please.
15 Q I'm sorry. Page 21.
16 A Oh, 21.
17 Q Footnote 10.
18 A I was on page 10. Okay, page 21,
19 footnote 10, yes.
20 Q Footnote 10, the third sentence it
21 says in the Second Circuit brief:
22 "The Client Manual relates solely to term
23 and conditions concerning the relationship
24 between Citibank and its customers regarding
25 the use and operation of Citibank deposit

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1 accounts."
2 Do you agree with that statement?
3 A I agree with that statement, but as
4 amplified by the analysis that I just told you
5 I have about what a deposit account is, that it
6 does not include the checking account.
7 Q I understand.
8 A Well, I want the record to understand
9 it.
10 Q She's got it. Let's go back to the
11 Client Manual.
12 A Sure.
13 Q On page 2 of the Client Manual.
14 A Page 2.
15 Q It's the Table of Contents.
16 A Okay.
17 Q Do you see where it says
18 "Arbitration" in the Table of Contents?
19 A I'm sure I will see it when I hunt
20 around for it enough. Yes, okay. At the top
21 there.
22 Q So would you agree that a customer
23 who reviews the Table of Contents would see
24 that arbitration is discussed on page 8 of the
25 Client Manual?

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1 A Yes.
2 Q If you could turn to page 8 of the
3 Client Manual.
4 A Okay. Go ahead.
5 Q Do you see where it says
6 "Arbitration"?
7 A I do.
8 Q Could you please read that paragraph.
9 A "This Agreement contains an
10 arbitration provision that authorizes either
11 party to elect mandatory and binding
12 arbitration of certain disputes. The terms of
13 the arbitration provision are set forth in the
14 section entitled 'Resolution of Disputes by
15 Arbitration.' Please read this arbitration
16 provision carefully."
17 Q Would you agree that a customer
18 reviewing this arbitration paragraph on page 8
19 of the Client Manual would learn that the
20 Client Manual contains a section entitled
21 "Resolution of Disputes by Arbitration"?
22 MR. SPORN: Objection to the form of
23 the question as to what somebody else
24 might think about, operation of someone
25 else's mind.

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1 MR. STRAUSS: You can answer.
2 THE WITNESS: Most likely.
3 MR. STRAUSS: Take a look at another
4 document.
5 (Exhibit 7 marked for
6 identification.)
7 THE WITNESS: (Reviewing document.)
8 Q Are you looking?
9 A Yeah, sure. Go ahead.
10 Q Mr. Hirsch, have you ever seen this
11 document before?
12 A Yes.
13 Q What is it?
14 A It is the first statement that I
15 received in the mail after I opened the
16 accounts on October 25 of 2010. It's the
17 November 25, 2010 statement.
18 Q I believe you -- was this the first
19 account statement you received after opening
20 your accounts?
21 A Yes, it is.
22 Q I believe you stated earlier that you
23 were -- that you accessed this account
24 statement online because you were particularly
25 concerned about your initial account statement

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1 or something to that effect?
2 MR. SPORN: Objection.
3 THE WITNESS: I didn't say I was
4 particularly concerned, I just wanted to
5 review it before I received it in the
6 mail.
7 Q Now on page -- on the first page of
8 this account statement towards the bottom it
9 says:
10 "Please refer to your Citibank Account
11 Terms and Conditions for details on how we
12 determine your monthly fees and charges."
13 A Right.
14 Q Do you see that?
15 A I do.
16 Q Did you ever inquire with anyone at
17 Citibank as to what the Citibank Account Terms
18 and Conditions were?
19 A I did not, and I didn't feel that
20 there was any need to because my accounts
21 didn't carry any monthly fees or charges.
22 Q So from your answer, if I am hearing
23 it correctly, did you assume that the Citibank
24 Account Terms and Conditions only related to
25 how Citibank determines your monthly fees and

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1 charges?
2 A I did not make that assumption.
3 Q Okay. But because you did not need
4 to learn the details on how Citibank determined
5 your monthly fees and charges, you did not
6 inquire about the Citibank Account Terms and
7 Conditions; is that correct?
8 A That's correct. It would also be
9 correct to say that I have had bank accounts
10 from the time I was a teenager going back 50
11 some years, and the only time that I can ever
12 recollect having to be concerned about a bank's
13 terms and conditions was having to do with stop
14 payment on a check or some other unusual
15 circumstance like that.
16 Otherwise, routinely over 50 years' time I
17 can tell you that I have never had a need to
18 ever review terms and conditions of the bank
19 accounts I had. Because issues never arise
20 that require it.
21 Q So based on that experience that
22 you've had with over 50 years of having bank
23 accounts, you did not feel the need to inquire
24 about the Citibank Account Terms and
25 Conditions?

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<p>1 A I feel the need to inquire when I</p> <p>2 have some issue, not necessarily a dispute, but</p> <p>3 some issue that pertains to my account that I</p> <p>4 need to look at that particular portion of the</p> <p>5 terms and conditions that deals with that</p> <p>6 particular issue.</p> <p>7 But as a general proposition, it is the</p> <p>8 rarest of rare occasions to ever have such an</p> <p>9 issue that requires that.</p> <p>10 Q Okay.</p> <p>11 A Wire transfers would be another</p> <p>12 situation. I have had occasions to make wire</p> <p>13 transfers over the years, not typically, and</p> <p>14 then you look at the terms and conditions</p> <p>15 pertaining to wire transfers. You know, so</p> <p>16 it's that kind of thing.</p> <p>17 MR. STRAUSS: Now I will mark for</p> <p>18 identification as Hirsch 8 a document</p> <p>19 bearing Bates number Bertram Hirsch-2 and</p> <p>20 Bertram Hirsch-3.</p> <p>21 (Exhibit 8 marked for</p> <p>22 identification.)</p> <p>23 THE WITNESS: (Reviewing document.)</p> <p>24 Q Do you recognize this document,</p> <p>25 Mr. Hirsch?</p>	<p>1 A In the envelope it came in.</p> <p>2 Q If you could look at the second page</p> <p>3 of this document.</p> <p>4 A Sure.</p> <p>5 Q The first sentence, it says:</p> <p>6 "All accounts subject to approval and</p> <p>7 applicable terms and fees."</p> <p>8 Do you see that?</p> <p>9 A I do.</p> <p>10 Q Did you ever inquire with anyone at</p> <p>11 Citibank what the applicable terms of the</p> <p>12 Citibank account were?</p> <p>13 A I did not.</p> <p>14 MR. STRAUSS: Let's just go off for</p> <p>15 five minutes.</p> <p>16 (Off the record.)</p> <p>17 MR. STRAUSS: I have no further</p> <p>18 questions, Mr. Hirsch. Thank you.</p> <p>19 MR. SPORN: Okay, thank you.</p> <p>20</p> <p>21 (The deposition was concluded at 12:26 p.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																																																												
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<p>1 A Well, not in this form, but it</p> <p>2 appears to be the offer that I received for the</p> <p>3 American Airlines miles that I responded to,</p> <p>4 and that was the, ah -- that was the impetus</p> <p>5 for opening the bank accounts that I opened in</p> <p>6 October of 2010.</p> <p>7 Q When you say you don't recognize it</p> <p>8 in this form, what do you mean?</p> <p>9 A Well, what I received in the mail was</p> <p>10 a glossy, you know, attractive offering</p> <p>11 document that was not on 8 1/2 x 11 paper like</p> <p>12 this. That's what I mean by that.</p> <p>13 Q Okay. And do you know that your</p> <p>14 counsel produced this document to Citibank in</p> <p>15 response to Citibank's document requests?</p> <p>16 A Yes.</p> <p>17 Q But this particular document, or at</p> <p>18 least the form of this particular document, is</p> <p>19 not a document that is in your Citibank files?</p> <p>20 A No, it's not.</p> <p>21 Q But a form of this document is in</p> <p>22 your Citibank files?</p> <p>23 A I have the original mailing that I</p> <p>24 received from Citibank.</p> <p>25 Q Okay.</p>	<p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, _____,</p> <p>3 do hereby certify that I have read the</p> <p>4 foregoing transcript of my testimony taken on</p> <p>5 _____, 2014, and have signed it subject</p> <p>6 to the following changes:</p> <p>7</p> <table><tr><td>PAGE</td><td>LINE</td><td>CHANGE</td><td>REASON</td></tr><tr><td>8</td><td></td><td></td><td></td></tr><tr><td>9</td><td></td><td></td><td></td></tr><tr><td>10</td><td></td><td></td><td></td></tr><tr><td>11</td><td></td><td></td><td></td></tr><tr><td>12</td><td></td><td></td><td></td></tr><tr><td>13</td><td></td><td></td><td></td></tr><tr><td>14</td><td></td><td></td><td></td></tr><tr><td>15</td><td></td><td></td><td></td></tr><tr><td>16</td><td></td><td></td><td></td></tr><tr><td>17</td><td></td><td></td><td></td></tr><tr><td>18</td><td></td><td></td><td></td></tr><tr><td>19</td><td></td><td></td><td></td></tr><tr><td>20</td><td></td><td></td><td></td></tr><tr><td>21</td><td></td><td></td><td></td></tr></table> <p>Sworn and subscribed to before me on this</p> <p>_____ day of _____, 2014.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	PAGE	LINE	CHANGE	REASON	8				9				10				11				12				13				14				15				16				17				18				19				20				21			
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C E R T I F I C A T E

I, PATRICIA A. SANDS, a Shorthand Reporter
and Notary Public of the States of New York and
New Jersey, do hereby certify that prior to the
commencement of the examination the witness was
sworn by me to testify the truth, the whole
truth and nothing but the truth.

I do further certify that the foregoing is
a true and accurate transcript of the testimony
as taken stenographically by and before me at
the time, place, and on the date hereinbefore
set forth.

I do further certify that I am neither of
counsel nor attorney for any party in this
action, and that I am not interested in the
event nor outcome of this litigation.

New York Certificate No.: 01SA4974309
New Jersey Certificate No.: 2109345

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<p>1 2 UNITED STATES DISTRICT COURT 3 SOUTHERN DISTRICT OF NEW YORK 4 -----x 5 BERTRAM HIRSCH and IGOR ROMANOV, on beh 6 of themselves and all others similarly 7 situated, 8 Plaintiffs, 9 - against - 10 CITIBANK N.A., 11 Defendant. 12 -----x 13 January 7, 2014 9:45 a.m. 14 15 DEPOSITION of NANCY LEWIS, taken 16 by the Plaintiffs, pursuant to Notice, 17 held at the offices of Veritext LLC, 1250 18 Broadway, New York, New York, before 19 Debbie Zaromatidis, a Shorthand Reporter 20 and Notary Public of the State of New 21 York. 22 23 24 25</p>	<p>3 1 2 S T I P U L A T I O N S 3 4 IT IS HEREBY STIPULATED AND 5 AGREED by and between the Attorneys for 6 the respective parties hereto that filing 7 and sealing be and the same are hereby 8 waived. 9 IT IS FURTHER STIPULATED AND 10 AGREED that all objections except as to 11 the form of the question, shall be 12 reserved to the time of the trial. 13 IT IS FURTHER STIPULATED AND 14 AGREED that the within examination may be 15 signed and sworn to before any notary 16 public with the same force and effect as 17 though signed and sworn to before this 18 Court. 19 20 21 22 23 24 25</p>
<p>2 1 2 A P P E A R A N C E S : 3 4 THE JAMES C. KELLY LAW OFFICE 5 Attorneys for Plaintiffs 6 244 5th Avenue, Suite K-278 7 New York, New York 10001 8 BY: JAMES C. KELLY, ESQ. 9 jkelly@jkellylaw.com 10 - and - 11 SCHOENGOLD & SPORN, P.C. 12 World Wide Plaza 13 393 West 49th Street 14 New York, New York 10019 15 BY: SAMUEL P. SPORN, ESQ. 16 sporn@spornlaw.com 17 18 STROOCK & STROOCK & LAVAN, LLP 19 Attorneys for Defendant 20 180 Maiden Lane 21 New York, New York 10038 22 BY: JOSEPH B. STRAUSS, ESQ. 23 24 25</p>	<p>4 1 LEWIS 2 NANCY LEWIS, 3 having first been duly sworn by a Notary 4 Public of the State of New York, was 5 examined and testified as follows: 6 EXAMINATION BY MR. KELLY: 7 Q. Good morning, Ms. Lewis. 8 A. Good morning. 9 Q. My name is James Kelly. I am 10 plaintiffs counsel along with Mr. Samuel 11 Sporn, and we will be taking your 12 deposition today. We are going to run 13 about 45, 50 minutes, and then we will 14 take a break, but if you need to take a 15 break just let me know, and we will stop 16 to take a break any time. 17 As I am questioning you, your 18 attorney will object a lot, but you are 19 still -- you should answer the question, 20 and we will handle the objections later. 21 Can you state your name and 22 address for the record? 23 A. Nancy Lewis, 132 Baybright 24 Drive, Shirley, New York. 25 Q. When did you start working at</p>

<p>5</p> <p>1 LEWIS</p> <p>2 Citibank?</p> <p>3 A. 2002.</p> <p>4 Q. What were your duties when you</p> <p>5 started working there?</p> <p>6 A. I was an area operations</p> <p>7 director. I oversaw 21 branches.</p> <p>8 Q. When you say you oversaw 21</p> <p>9 branches, what did you oversee?</p> <p>10 A. That the branches followed all</p> <p>11 the prescribed policies and procedures.</p> <p>12 Q. Where was your office location?</p> <p>13 A. Plainview, Long Island.</p> <p>14 Q. Is that a Citibank branch?</p> <p>15 A. Yes.</p> <p>16 Q. Did you ever oversee that branch</p> <p>17 also?</p> <p>18 A. I did.</p> <p>19 Q. All the branches that you</p> <p>20 oversaw, were they located in New York?</p> <p>21 A. Yes.</p> <p>22 Q. Did you oversee the Great Neck</p> <p>23 branch that is the issue of this lawsuit?</p> <p>24 A. I did not.</p> <p>25 Q. And since you began working at</p>	<p>7</p> <p>1 LEWIS</p> <p>2 Q. How many times?</p> <p>3 A. Many.</p> <p>4 Q. Many. Can you state your date</p> <p>5 of birth for the record?</p> <p>6 A. [REDACTED]</p> <p>7 Q. Can you tell us what your</p> <p>8 education is beginning with your high</p> <p>9 school?</p> <p>10 A. I graduated from high school,</p> <p>11 and I have a bachelors degree in business</p> <p>12 administration.</p> <p>13 Q. Where did you go to high school?</p> <p>14 A. Saint John the Baptist in West</p> <p>15 Islip.</p> <p>16 Q. Did you go to graduate school?</p> <p>17 A. No.</p> <p>18 Q. Do you have any professional</p> <p>19 degrees?</p> <p>20 A. No.</p> <p>21 Q. When did you graduate and</p> <p>22 receive your bachelors degree?</p> <p>23 A. 1992.</p> <p>24 Q. Did you have any business</p> <p>25 experience before starting at Citibank in</p>
<p>6</p> <p>1 LEWIS</p> <p>2 Citibank as an area operations director in</p> <p>3 2002, is that the same position that you</p> <p>4 held up until now?</p> <p>5 A. No. I had that position for two</p> <p>6 years and then moved into my current role.</p> <p>7 Q. And what is your current role?</p> <p>8 A. I am a senior vice president.</p> <p>9 My team is responsible for branch support,</p> <p>10 so any number of different administrative</p> <p>11 functions including creating and</p> <p>12 implementing all policies and procedures.</p> <p>13 Q. And where is your location now?</p> <p>14 A. Long Island City.</p> <p>15 Q. Is that the big Citibank</p> <p>16 building?</p> <p>17 A. Yes.</p> <p>18 Q. You began that in about 2004</p> <p>19 doing that?</p> <p>20 A. Yes.</p> <p>21 Q. Until present now?</p> <p>22 A. Correct.</p> <p>23 Q. Have you ever been deposed</p> <p>24 before?</p> <p>25 A. Yes.</p>	<p>8</p> <p>1 LEWIS</p> <p>2 2002?</p> <p>3 A. Yes, I worked for another bank</p> <p>4 for 23 years?</p> <p>5 Q. Which bank was that?</p> <p>6 A. Fleetbank.</p> <p>7 MR. SPORN: Sorry. I missed</p> <p>8 that.</p> <p>9 THE WITNESS: Fleetbank.</p> <p>10 Q. What did you do at Fleetbank?</p> <p>11 A. A variety of roles. I started</p> <p>12 as a teller up to branch manager and then</p> <p>13 a role similar to the role that I have</p> <p>14 today.</p> <p>15 Q. When did you cease working at</p> <p>16 Fleetbank?</p> <p>17 A. 2000.</p> <p>18 Q. What did you do between 2000 and</p> <p>19 2002?</p> <p>20 A. I took care of my daughter who</p> <p>21 was ill.</p> <p>22 Q. Is that why you left Fleetbank</p> <p>23 in 2000?</p> <p>24 A. Yes.</p> <p>25 Q. Did you resign or were you laid</p>

<p style="text-align: right;">9</p> <p>1 LEWIS</p> <p>2 off?</p> <p>3 A. I was -- my job was discontinued</p> <p>4 when the Bank of America merger took</p> <p>5 place.</p> <p>6 Q. Were you involved in creating</p> <p>7 the policies for opening accounts for</p> <p>8 Citibank?</p> <p>9 A. Yes.</p> <p>10 Q. Can you describe the current</p> <p>11 policies for opening accounts, what the</p> <p>12 Citibank representative has to do in order</p> <p>13 to open an account?</p> <p>14 MR. STRAUSS: Objection, vague.</p> <p>15 If you understand.</p> <p>16 A. They are required to take</p> <p>17 identification, have the customer complete</p> <p>18 paperwork, and provide the customer with</p> <p>19 disclosures.</p> <p>20 Q. What paperwork does the customer</p> <p>21 have to complete?</p> <p>22 A. It depends on the type of</p> <p>23 account that is open but always a</p> <p>24 signature card.</p> <p>25 Q. If it is a savings account or</p>	<p style="text-align: right;">11</p> <p>1 LEWIS</p> <p>2 Is that created in-house?</p> <p>3 A. No, an outside vendor prints</p> <p>4 them for us.</p> <p>5 MR. SPORN: I'm sorry. I</p> <p>6 missed that.</p> <p>7 THE WITNESS: An outside vendor</p> <p>8 prints them for us.</p> <p>9 Q. Is that like a pamphlet form, a</p> <p>10 booklet?</p> <p>11 A. Yes.</p> <p>12 Q. Has there ever been a situation</p> <p>13 where a branch has run out of the client</p> <p>14 manuals?</p> <p>15 A. I don't know.</p> <p>16 Q. How do you know how many client</p> <p>17 manuals to provide to each branch?</p> <p>18 A. Branches order their own.</p> <p>19 Q. So when they run out they order</p> <p>20 new client manuals?</p> <p>21 A. Yes, when they are running low.</p> <p>22 Q. Have you ever received any</p> <p>23 indications or notices from any branches</p> <p>24 or any complaints from customers that they</p> <p>25 never received a client manual?</p>
<p style="text-align: right;">10</p> <p>1 LEWIS</p> <p>2 checking account, what paperwork do they</p> <p>3 have to complete?</p> <p>4 A. A signature card.</p> <p>5 Q. Just the signature card?</p> <p>6 A. Yes.</p> <p>7 Q. They have to just sign the</p> <p>8 signature card?</p> <p>9 A. They have to sign the signature</p> <p>10 card.</p> <p>11 Q. And what disclosures are</p> <p>12 provided to customers when they open a</p> <p>13 savings account or checking account?</p> <p>14 A. A customer manual?</p> <p>15 Q. A customer manual.</p> <p>16 A. Yes.</p> <p>17 Q. Are there any other disclosures?</p> <p>18 A. Depending on the type of</p> <p>19 account, the marketplace.</p> <p>20 Q. Is this the same policy at every</p> <p>21 Citibank branch throughout the country?</p> <p>22 A. Yes.</p> <p>23 Q. The client manual that is</p> <p>24 provided to Citibank customers when they</p> <p>25 open up an account, where is that created?</p>	<p style="text-align: right;">12</p> <p>1 LEWIS</p> <p>2 MR. STRAUSS: Objection.</p> <p>3 A. No.</p> <p>4 Q. Do you know of any lawsuits or</p> <p>5 arbitrations where a customer or his</p> <p>6 representative claimed that they never</p> <p>7 received a client manual?</p> <p>8 A. No.</p> <p>9 Q. Do you know what an arbitration</p> <p>10 is?</p> <p>11 A. No.</p> <p>12 Q. Do you know what was said to the</p> <p>13 plaintiffs in this lawsuit, Bertram Hirsch</p> <p>14 and Igor Romanov? Do you know anything</p> <p>15 that was said to them by Citibank</p> <p>16 representatives that opened up their</p> <p>17 account?</p> <p>18 MR. STRAUSS: Objection.</p> <p>19 A. No.</p> <p>20 MR. STRAUSS: Who, what, where,</p> <p>21 when?</p> <p>22 Q. When they opened up their</p> <p>23 account. It was -- it was in 2010.</p> <p>24 MR. STRAUSS: So what is the</p> <p>25 question?</p>

<p>13</p> <p>1 LEWIS</p> <p>2 Q. Do you know --</p> <p>3 MR. KELLY: She said no. The</p> <p>4 question was if she knew what was said to</p> <p>5 them when they opened up their accounts.</p> <p>6 A. No.</p> <p>7 Q. Is there any document or other</p> <p>8 piece of evidence to show that the</p> <p>9 plaintiffs in this lawsuit Bertram Hirsch</p> <p>10 or Igor Romanov actually received a client</p> <p>11 manual at the time they opened up their</p> <p>12 accounts?</p> <p>13 A. The signature card.</p> <p>14 Q. How does that show that they</p> <p>15 received the client manual when they</p> <p>16 opened up the account?</p> <p>17 A. It states on it that the</p> <p>18 customer is saying that they are going to</p> <p>19 abide by the terms designated.</p> <p>20 MR. KELLY: Let's introduce as</p> <p>21 Plaintiffs' Exhibit 18 a document Bates</p> <p>22 stamped Citi-0000077 to 78 titled</p> <p>23 "Concierge daily transaction transmittal</p> <p>24 report," and along with that I am going to</p> <p>25 introduce as Plaintiffs' Exhibit number 19</p>	<p>15</p> <p>1 LEWIS</p> <p>2 including our privacy notice U.S. markets</p> <p>3 effective July 1, 2010."</p> <p>4 (Plaintiffs' Exhibit 20 marked</p> <p>5 for identification.)</p> <p>6 (Document handed to witness.)</p> <p>7 Q. Can you just take a look at this</p> <p>8 document, the client manual that was</p> <p>9 introduced. Do you recognize that</p> <p>10 document?</p> <p>11 A. Yes.</p> <p>12 Q. This is the document that is</p> <p>13 provided to customers when they open up</p> <p>14 their accounts?</p> <p>15 A. Correct.</p> <p>16 Q. Is there anywhere on the front</p> <p>17 page of this document that indicates this</p> <p>18 is an agreement or contains any terms and</p> <p>19 conditions?</p> <p>20 MR. STRAUSS: Objection.</p> <p>21 A. I don't understand what that</p> <p>22 means.</p> <p>23 Q. Is there any indication on the</p> <p>24 first page of this document that this is</p> <p>25 an agreement?</p>
<p>14</p> <p>1 LEWIS</p> <p>2 Bates stamp Citi-0000079 through 80 also</p> <p>3 titled "Concierge daily transaction</p> <p>4 transmittal report."</p> <p>5 (Plaintiffs' Exhibit 18 and 19</p> <p>6 marked for identification.)</p> <p>7 (Documents handed to witness.)</p> <p>8 Q. Can you turn to Plaintiffs'</p> <p>9 Exhibit 18, the second page. Do you</p> <p>10 recognize that document?</p> <p>11 A. Yes.</p> <p>12 Q. Where do you see that on this</p> <p>13 document, an indication that the customer</p> <p>14 received a client manual?</p> <p>15 A. "By signing below I certify my</p> <p>16 tax status and agree to be bound by any</p> <p>17 agreement governing any account opened in</p> <p>18 the title indicated on this card."</p> <p>19 Q. That tells you that the client</p> <p>20 received a client manual?</p> <p>21 A. Yes.</p> <p>22 MR. KELLY: I would like to</p> <p>23 introduce as Plaintiff's Exhibit number 20</p> <p>24 Bates stamp Citi-00000155 through 183</p> <p>25 titled "Client manual consumer accounts</p>	<p>16</p> <p>1 LEWIS</p> <p>2 MR. STRAUSS: Objection.</p> <p>3 Seeking a legal conclusion. It says what</p> <p>4 it says. I don't understand what you are</p> <p>5 asking.</p> <p>6 MR. SPORN: She may answer.</p> <p>7 A. I don't understand the question.</p> <p>8 MR. STRAUSS: She already</p> <p>9 answered it.</p> <p>10 Q. As part of Citibank's policies</p> <p>11 and procedures when the Citibank</p> <p>12 representative provides this to the</p> <p>13 customer when they open an account, are</p> <p>14 they required to review this document with</p> <p>15 them?</p> <p>16 A. No.</p> <p>17 Q. Is there any training or</p> <p>18 procedures training Citibank employees on</p> <p>19 what arbitration is?</p> <p>20 A. No.</p> <p>21 Q. Has any Citibank branch manager</p> <p>22 or Citibank employee asked you or anyone</p> <p>23 in your office or department what</p> <p>24 arbitration is?</p> <p>25 A. I can only answer for myself,</p>

<p>17</p> <p>1 LEWIS</p> <p>2 not for anyone in my department, but no.</p> <p>3 Q. Did you help create that client</p> <p>4 manual?</p> <p>5 A. No.</p> <p>6 Q. Do you know when it was</p> <p>7 originally created?</p> <p>8 A. No.</p> <p>9 Q. Can you turn to page --</p> <p>10 MR. STRAUSS: Sorry. I'll</p> <p>11 object to the last question.</p> <p>12 Q. Can you turn to page Bates stamp</p> <p>13 Citi-0000177. At the top there it states</p> <p>14 "Resolution of disputes by arbitration".</p> <p>15 It states "This section contains important</p> <p>16 information regarding your deposit,</p> <p>17 credit, checking plus, checking plus</p> <p>18 (variable rates) accounts and the services</p> <p>19 related there to. It provides that either</p> <p>20 you or we can require that any dispute be</p> <p>21 resolved by binding arbitration</p> <p>22 arbitration and replaces the right to go</p> <p>23 to court including the right to go to</p> <p>24 class action or similar proceeding."</p> <p>25 Do you see that?</p>	<p>19</p> <p>1 LEWIS</p> <p>2 says what it says.</p> <p>3 A. I have no idea.</p> <p>4 Q. Do you think that if the U.S.</p> <p>5 constitution provides that all citizens</p> <p>6 are entitled to trial by jury in a lawsuit</p> <p>7 that that is an important right to have?</p> <p>8 MR. STRAUSS: Objection.</p> <p>9 A. I don't have an opinion on that.</p> <p>10 Q. Do you agree that if this</p> <p>11 arbitration takes away a right provided to</p> <p>12 the customer by the U.S. constitution that</p> <p>13 that is something that should be disclosed</p> <p>14 and explained to a customer?</p> <p>15 MR. STRAUSS: Objection.</p> <p>16 A. I don't have an opinion on that</p> <p>17 either.</p> <p>18 MR. STRAUSS: These questions</p> <p>19 are also outside the enumerated topics of</p> <p>20 examination in the 30(b)(6) notice, and</p> <p>21 while you may ask them any answers she is</p> <p>22 providing you are not on behalf of</p> <p>23 Citibank but on behalf of herself</p> <p>24 personally.</p> <p>25 MR. KELLY: We disagree. The</p>
<p>18</p> <p>1 LEWIS</p> <p>2 A. Yes.</p> <p>3 Q. Do you know that the Citibank</p> <p>4 customers are entitled to trial by jury?</p> <p>5 MR. STRAUSS: Objection.</p> <p>6 MR. KELLY: Withdrawn.</p> <p>7 Q. Do you know that the U.S.</p> <p>8 constitution provides that every citizen</p> <p>9 is entitled to a trial by jury in a</p> <p>10 lawsuit?</p> <p>11 MR. STRAUSS: Just so I don't</p> <p>12 have to keep objecting, I'll object to</p> <p>13 this entire line of questioning.</p> <p>14 A. No.</p> <p>15 Q. If you could turn to the next</p> <p>16 page on the first page at the top, it</p> <p>17 reads "You agree that no class action or</p> <p>18 other claims may be pursued in arbitration</p> <p>19 nor may such action be pursued in court if</p> <p>20 either you or we elect arbitration."</p> <p>21 Do you see that this arbitration</p> <p>22 provision does away with the right of a</p> <p>23 Citibank customer to bring a class action</p> <p>24 here?</p> <p>25 MR. STRAUSS: Objection. It</p>	<p>20</p> <p>1 LEWIS</p> <p>2 notice is very broad, and this is very</p> <p>3 important --</p> <p>4 MR. STRAUSS: How does that</p> <p>5 involve whether the validity or propriety</p> <p>6 of arbitration. Why don't you ask about</p> <p>7 the supreme court's decision in AT&T</p> <p>8 Mobility versus Concepcion and the supreme</p> <p>9 court Discover v. Laster decision? Do you</p> <p>10 even know those cases exist, James?</p> <p>11 MR. KELLY: Yes.</p> <p>12 MR. STRAUSS: Okay. Good. You</p> <p>13 should read them again.</p> <p>14 Q. Can we go back to Plaintiff's</p> <p>15 Exhibit number 20. Do you see at the top</p> <p>16 over there in the front it says CFA name?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know what the designation</p> <p>19 CFA is?</p> <p>20 A. What do you mean?</p> <p>21 Q. Do you know what that stands</p> <p>22 for, CFA?</p> <p>23 A. Client financial associate I</p> <p>24 believe, which was the prior job title of</p> <p>25 a personal banker.</p>

<p style="text-align: right;">21</p> <p>1 LEWIS</p> <p>2 Q. Do you know Michael Ashley?</p> <p>3 A. No.</p> <p>4 Q. Do you know that Michael Ashley</p> <p>5 opened up Bertram Hirsch's account?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know that he was deposed</p> <p>8 yesterday?</p> <p>9 A. Yes.</p> <p>10 Q. Have you ever spoken with him</p> <p>11 before?</p> <p>12 A. No.</p> <p>13 Q. What about Fazri Zuber? Do you</p> <p>14 know who that is?</p> <p>15 A. No.</p> <p>16 MR. KELLY: I would like to</p> <p>17 introduce Plaintiff's Exhibit 21. It's</p> <p>18 the Seventh Amendment of the U.S.</p> <p>19 Constitution, and as Exhibit 22 the New</p> <p>20 York CLS CONST 2, which is the New York</p> <p>21 State Constitution section 2, trial by</p> <p>22 jury.</p> <p>23 (Plaintiffs' Exhibits 21 and 22</p> <p>24 marked for identification.)</p> <p>25 (Documents handed to witness.)</p>	<p style="text-align: right;">23</p> <p>1 LEWIS</p> <p>2 A. I don't understand the question.</p> <p>3 MR. STRAUSS: Do you want to</p> <p>4 take a break?</p> <p>5 MR. KELLY: Sure.</p> <p>6 (Recess taken.)</p> <p>7 MR. KELLY: I would like to</p> <p>8 introduce as Plaintiffs' Exhibit 23 a</p> <p>9 document Bates stamped Citi-0000123</p> <p>10 through 139.</p> <p>11 (Plaintiffs' Exhibit 23 marked</p> <p>12 for identification.)</p> <p>13 (Document handed to witness.)</p> <p>14 Q. Ms. Lewis, can you review that</p> <p>15 document? Do you recognize this document?</p> <p>16 A. I do.</p> <p>17 Q. Can you state for the record</p> <p>18 what the document is?</p> <p>19 A. The first page is a printout of</p> <p>20 the home page of the National Form Center,</p> <p>21 which is an intranet site for Citi</p> <p>22 employees to go to, the same for the</p> <p>23 second page, and then the remaining pages</p> <p>24 are procedures for opening a consumer</p> <p>25 account.</p>
<p style="text-align: right;">22</p> <p>1 LEWIS</p> <p>2 Q. Plaintiff's Exhibit 21, the</p> <p>3 Seventh Amendment, have you ever heard of</p> <p>4 that before?</p> <p>5 MR. STRAUSS: Objection.</p> <p>6 A. No.</p> <p>7 Q. Plaintiffs' Exhibit number 22,</p> <p>8 section 2 of the New York State</p> <p>9 Constitution, "Trial by jury in all cases</p> <p>10 in which it has heretofore been guaranteed</p> <p>11 by constitutional provision shall remain</p> <p>12 inviolate forever, but a jury trial may be</p> <p>13 waived by the parties in all civil cases</p> <p>14 in the manner to be prescribed by law."</p> <p>15 Have you ever seen that</p> <p>16 provision before?</p> <p>17 A. No.</p> <p>18 Q. When you created the policies</p> <p>19 and procedures, which included to provide</p> <p>20 every customer the client manual, you</p> <p>21 didn't think it was important that</p> <p>22 Citibank representatives disclose that the</p> <p>23 document does away with their right to a</p> <p>24 trial by jury?</p> <p>25 MR. STRAUSS: Objection.</p>	<p style="text-align: right;">24</p> <p>1 LEWIS</p> <p>2 Q. Were you involved in creating</p> <p>3 policies and procedures in opening</p> <p>4 accounts?</p> <p>5 A. Not for creating them. My team</p> <p>6 is responsible for updating them when we</p> <p>7 require updates.</p> <p>8 Q. Do you know at what point the</p> <p>9 customer is provided the client manual?</p> <p>10 Is it after they sign the signature card</p> <p>11 or before they sign the signature card?</p> <p>12 A. It is at the end of the session</p> <p>13 when they receive the welcome kit.</p> <p>14 Q. Is that after they sign the</p> <p>15 signature card?</p> <p>16 A. Yes.</p> <p>17 Q. And the client manual is</p> <p>18 contained in the welcome kit?</p> <p>19 A. Yes.</p> <p>20 Q. Is that like a folder?</p> <p>21 A. Yes.</p> <p>22 Q. Does it say welcome kit on it?</p> <p>23 A. I don't know.</p> <p>24 MR. KELLY: I would like to</p> <p>25 introduce as Plaintiff's Exhibit number 24</p>

25

1 LEWIS
2 a document Bates stamped Citi-0000119
3 through 122 titled "Personal banker
4 foundations participant guide North
5 America consumer."
6 (Plaintiffs' Exhibit 24 marked
7 for identification.)
8 (Document handed to witness.)
9 Q. Do you recognize this document?
10 A. I do.
11 Q. Were you involved in the
12 creation of this document?
13 A. No.
14 Q. Were you involved in any
15 updating of this document?
16 A. No.
17 Q. How do you recognize this
18 document?
19 A. It was reviewed with me by
20 Joseph.
21 Q. In preparation for the
22 deposition?
23 A. Yes.
24 MR. SPORN: This Joseph?
25 Q. Joseph Strauss?

27

1 LEWIS
2 trainings, so that I would understand all
3 the job functions within the branch.
4 Q. If you could turn to page 123,
5 do you recognize that document? It says
6 "Customer care checklist".
7 A. I do.
8 Q. Is that something all personal
9 bankers must use when opening an account?
10 A. No.
11 Q. How is this used, this document?
12 A. It can be used as a training
13 tool for new personal bankers. They use
14 it mainly to remind them to order checks
15 or order a debit for the customer.
16 Q. Is this something that is a
17 printout or available on the customer
18 screen when the customer opens up their
19 account?
20 A. It prints out.
21 Q. And does it have the customer's
22 name on each one, like the sample on here?
23 A. Yes.
24 Q. Are these kept in the customer's
25 file and printed out?

26

1 LEWIS
2 A. Yes.
3 MR. STRAUSS: The one and only.
4 Q. But prior to that time -- when
5 did you review it with him?
6 A. Last week.
7 Q. Last week.
8 Was that the first time you met
9 with him in preparation for your
10 deposition?
11 A. Yes.
12 Q. Prior to that time you had never
13 seen this document before?
14 A. Not this specific one. I took
15 this training and when I took this
16 training I received that version.
17 Q. This is a document provided in
18 connection with a training course?
19 A. Yes.
20 Q. What is the training course for?
21 A. Personal banker foundations.
22 Q. Why did you have to take
23 training for that?
24 A. In my role when I joined Citi, I
25 needed to go through all of the branch

28

1 LEWIS
2 A. No.
3 Q. What happens to them?
4 A. We have nothing in our
5 procedures that talks about this, so I am
6 not sure what -- what the bankers do.
7 MR. KELLY: I would like to
8 introduce as Plaintiff's Exhibit number 25
9 a document entitled "Our privacy notice
10 from new customer Citibank." This document
11 is a document provided by plaintiff Hirsch
12 in this lawsuit to us that he indicated
13 was provided to him when he opened up his
14 account at Citibank.
15 (Plaintiffs' Exhibit 25 marked
16 for identification.)
17 (Document handed to witness.)
18 Q. Do you recognize this document?
19 A. Yes.
20 Q. Is this provided to every
21 customer that opens up an account at
22 Citibank?
23 A. I don't believe so. I believe
24 the privacy notice is included in the
25 customer manual.

29

1 LEWIS
2 MR. STRAUSS: When you say
3 customer manual, you are referring to the
4 client manual.
5 Q. You have never seen where a
6 privacy notice was not included in a
7 client --
8 A. I don't understand the question.
9 Q. You have never seen the privacy
10 notice as a separate document outside of
11 the client manual?
12 A. So the privacy notice is
13 included in the client manual, but this is
14 a separate document in case a customer
15 asks for just a copy of the privacy
16 notice.
17 MR. KELLY: I would like to
18 introduce as Plaintiff's Exhibit number 26
19 a document Bates stamped Citi-00000184
20 through 201 titled "Marketplace addendum
21 New York effective July 1, 2010."
22 (Plaintiffs' Exhibit 26 marked
23 for identification.)
24 (Document handed to witness.)
25 Q. Do you recognize that document?

30

1 LEWIS
2 A. Yes.
3 Q. What is this document?
4 A. It is a supplemental to the
5 customer manual.
6 Q. Is it a separate document?
7 A. Yes.
8 Q. Do customers receive this when
9 they open an account?
10 A. Yes.
11 Q. So they receive the client
12 manual and the marketplace addendum, which
13 is two separate documents?
14 A. Correct.
15 MR. KELLY: I would like to
16 introduce as Plaintiffs' Exhibit number 27
17 the declaration of Joan Haslam,
18 H-A-S-L-A-M, J-O-A-N.
19 (Plaintiffs' Exhibit 27 marked
20 for identification.)
21 (Document handed to witness.)
22 Q. Have you ever seen this document
23 before?
24 A. No.
25 Q. Do you know who Joan Haslam is?

31

1 LEWIS
2 A. Yes.
3 Q. Can you state for the record who
4 she is?
5 A. Joan works in our legal
6 department at Citi.
7 Q. Is she a lawyer?
8 A. I don't know.
9 Q. Is that the same Citibank
10 location where you work at in Long Island
11 City?
12 A. Yes.
13 Q. Can you turn to page 3,
14 paragraph 7. It states here "Like any
15 other deposit account opened with Citibank
16 in October 2010 the accounts are subject
17 to the client manual effective January 1,
18 2010 (the 'client manual'). Attached
19 hereto as Exhibit 3 is an exemplar of the
20 client manual. In addition to the client
21 manual the Romanov account is also subject
22 to the Citibank California and Nevada
23 marketplace addendum effective January 1,
24 2010 (the 'marketplace')." Do you know why Ms. Haslam did

32

1 LEWIS
2 not state that the New York plaintiff
3 Bertram Hirsch's account is not subject to
4 the marketplace addendum that I just
5 provided to you?
6 A. No.
7 Q. Do you know why Ms. Haslam
8 stated that the manuals effective January
9 1, 2010 governed the opening of
10 plaintiff's accounts when it was actually
11 the client manual effective July 1, 2010
12 that was the one that governed the
13 accounts when they opened it?
14 A. I believe she made a mistake.
15 MR. KELLY: I would like to
16 introduce as Plaintiff's Exhibit number 28
17 a document titled "Responses and
18 Objections of defendant Citibank N.A. to
19 plaintiff's first set of interrogatories."
20 (Plaintiffs' Exhibit 28 marked
21 for identification.)
22 (Document handed to witness.)
23 Q. Do you recognize this document?
24 A. No.
25 MR. STRAUSS: Can we step out

<p style="text-align: right;">33</p> <p>1 LEWIS 2 for a second, two minutes? 3 MR. SPORN: Just note counsel 4 for the defendant has asked for two 5 minutes. 6 MR. STRAUSS: Yes, just two 7 minutes. 8 (Recess taken.) 9 MR. STRAUSS: Back on the 10 record. 11 A. Regarding your last question, I 12 have seen the specific responses and 13 objections and reviewed them. 14 MR. SPORN: And what? 15 THE WITNESS: And reviewed them. 16 Q. I would like to introduce as 17 Plaintiff's Exhibit 29 a document, which 18 the first page is an e-mail from Joseph 19 Strauss to James Kelly and Samuel Sporn 20 with a CC to June Strickland, and it says 21 "Attached please find the verification 22 pages and Citibank responses and 23 objections to plaintiff's 24 interrogatories," and then the second page 25 is the verification page which is the</p>	<p style="text-align: right;">35</p> <p>1 LEWIS 2 Federal Express signature. 3 MR. KELLY: Signed the same 4 day, yes. 5 Q. Can you turn to page 4? It says 6 interrogatory number 1. The second part 7 of that interrogatory says "Specifically 8 state whether said Citibank person knows 9 and/or recalls that client manuals were 10 physically delivered and accepted by 11 plaintiffs in this action at the time of 12 opening said accounts." 13 Did you try to determine whether 14 there was any -- from Citibank personnel 15 whether client manuals were physically 16 delivered and accepted by the plaintiffs 17 in this action? 18 MR. STRAUSS: Objection. 19 A. I don't know what you mean by 20 that. 21 Q. Did you ask any Citibank 22 personnel whether there was any 23 information and communication that client 24 manuals were provided to plaintiffs in 25 this action when they opened up their</p>
<p style="text-align: right;">34</p> <p>1 LEWIS 2 attachment to the e-mail. 3 (Plaintiffs' Exhibit 29 marked 4 for identification.) 5 (Document handed to witness.) 6 Q. Do you recognize this 7 verification page? 8 A. I do. 9 Q. Do you know why this was 10 submitted after Citibank provided 11 plaintiff's responses -- responses and 12 objections to plaintiffs' first set of 13 interrogatories? 14 MR. STRAUSS: Objection. 15 A. I don't understand the question. 16 Q. Do you know that the 17 verification was not provided with 18 Citibank's responses and objections to 19 plaintiff's first set of interrogatories? 20 A. No. 21 Q. Can you turn to page -- 22 MR. STRAUSS: It was provided 23 the day after, right? 24 MR. KELLY: Yes, it was. 25 MR. STRAUSS: After you got the</p>	<p style="text-align: right;">36</p> <p>1 LEWIS 2 accounts? 3 A. No. 4 Q. Why not? 5 A. Do you mean the two bankers that 6 opened the accounts? 7 Q. Yes. 8 A. I don't know why not. I -- I 9 didn't. 10 Q. Other than it being the policy 11 and procedure that client manuals have to 12 be provided to customers, how do you know 13 that they are actually following that 14 policy and procedure, the Citibank 15 personnel bankers that open up accounts? 16 A. It is a required policy and 17 procedure. 18 Q. But how do you know that it is 19 being followed? Do you do audits? Do you 20 have them check mark anything like a 21 checklist or any kind of indication that 22 yes at the time they opened an account 23 they provide a client manual or anything 24 like that? 25 A. No.</p>

37

1 LEWIS
2 Q. Do you know George Lato?
3 A. No.
4 Q. You have never spoken with
5 George Lato before?
6 A. No.
7 Q. Do you know Fabiola Diaz?
8 A. No.
9 Q. You have never spoken with
10 Fabiola Diaz?
11 A. No.
12 Q. Do you know of the Citibank
13 promotional offers that are the subject of
14 this lawsuit?
15 A. Yes.
16 Q. Can you state for the record
17 what they are?
18 A. It was to get a American Airline
19 miles for new money that was brought into
20 Citi.
21 Q. Did you have anything to do with
22 the promotional offer?
23 A. No.
24 Q. Do you know who does?
25 A. Our sales and marketing.

38

1 LEWIS
2 Q. Do you know the head of the
3 sales and marketing department, what the
4 person's name is?
5 A. Today?
6 Q. Yes.
7 A. I don't.
8 Q. How about in 2010?
9 A. No.
10 Q. Do you know if the Citibank's
11 policies and procedures with respect to
12 opening up accounts are different in any
13 way if a customer has a promotional offer
14 as opposed to not having a professional
15 offer?
16 A. They are never different.
17 Q. Do you know when a promotional
18 offer that is the subject of this
19 complaint started?
20 A. I don't.
21 Q. Do you know how long it ran?
22 A. No.
23 Q. Do you know if it ran a year,
24 two years?
25 A. I don't know.

39

1 LEWIS
2 Q. Can we just go back to the
3 client's manual real quick. If you could
4 go to page Bates stamp 177 at the top the
5 first paragraph it states "This section
6 contains important information regarding
7 your deposit, ready credit checking plus
8 or checking plus (variable rate) accounts
9 and the services related thereto."
10 Do you know why Citibank regular
11 checking is not included here?
12 A. No.
13 Q. Do you agree that Citibank's
14 regular checking account is not subject to
15 this arbitration provision if it is not
16 included here?
17 (Continued on next page.)
18
19
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40

1 LEWIS
2 MR. STRAUSS: Objection.
3 A. I don't understand the question.
4 MR. KELLY: Can we take five
5 minutes to wrap up.
6 MR. STRAUSS: Sure.
7 (Recess taken.)
8 MR. KELLY: I think we are done
9 here. Thank you.
10 THE WITNESS: Great.
11 (Time noted: 10:50 a.m.)
12
13
14
15
16
17
18 NANCY LEWIS
19
20 Subscribed and sworn to before me
21 this day of , 2014
22
23
24
25

41

LEWIS
 CERTIFICATION

I, DEBBIE ZAROMATIDIS, a Shorthand Reporter and a Notary Public, do hereby certify that the foregoing witness, NANCY LEWIS, was duly sworn on the date indicated, and that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.

DEBBIE ZAROMATIDIS

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LEWIS
 EXHIBITS

PLAINTIFFS'			
EXHIBIT	DESCRIPTION	PAGE	
18	Concierge daily transaction transmittal report	14	
19	Concierge daily transaction transmittal report	14	
20	Client manual	15	
21	Seventh Amendment	21	
22	New York State Constitution Section 2	21	
23	Document Citi-0000123 through 139	23	
24	Document Citi-0000119 through 122	25	
25	Privacy notice	28	
26	Marketplace addendum	29	
27	Declaration of Joan Haslam	30	
28	Responses and objections to Plaintiffs' first set of Interrogatories	32	
29	Verification page	34	

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-----x 1:4,12	accounts 9:7,11 13:5,12 14:25 15:14 17:18 24:4 31:16 32:10,13 35:12 36:2,6,15 38:12 39:8	california 31:22 card 9:24 10:4,5,8,10 13:13 14:18 24:10,11,15 care 8:20 27:6 case 29:14 cases 20:10 22:9,13 cc 33:20 cease 8:15 center 23:20 certify 14:15 41:8,13 cfa 20:16,19,22 check 36:20 checking 10:2,13 17:17,17 39:7,8,11,14 checklist 27:6 36:21 checks 27:14 citi 23:21 26:24 31:6 37:20 citi-00000155 14:24 citi-00000184 29:19 citi-0000077 13:22 citi-0000079 14:2 citi-0000119 25:2 42:16 citi-0000123 23:9 42:14 citi-0000177 17:13 citibank 1:10 5:2,14 6:2,15 7:25 9:8,12 10:21,24 12:15 16:11,18,21,22 18:3,23 19:23 22:22 28:10,14,22 31:9 ,15,22 32:18 33:22 34:10 35:8,14,21 36:14 37:12 39:10 citibank's 16:10 34:18 38:10 39:13 citizen 18:8 citizens 19:5 city 6:14 31:11 civil 22:13 claimed 12:6 claims 18:18 class 17:24 18:17,23 client 10:23 11:13,16,20,25 12:7 13:10,15 14:14,19,20 ,25 15:8 17:3 20:23 22:20 24:9,17 29:4,7,11,13 30:11 31:17,18,20 32:11 35:9,15,23 36:11,23 42:10 client's 39:3 cls 21:20 communication 35:23 complaint 38:19 complaints 11:24 complete 9:17,21 10:3 concepcion 20:8 conciierge 13:23 14:3 42:6,8 conclusion 16:3 conditions 15:19 connection 26:18 const 21:20 constitution 18:8 19:5,12 21:19,21 22:9 42:12 constitutional 22:11 consumer 14:25 23:24 25:5 contained 24:18 contains 15:18 17:15 39:6 continued 39:17 copy 29:15 correct 6:22 15:15 30:14 counsel 4:10 33:3 country 10:21 course 26:18,20 court 1:2 3:18 17:23 18:19 20:9 court's 20:7 create 17:3 created 10:25 11:2 17:7 22:18 creating 6:11 9:6 24:2,5 creation 25:12 credit 17:17 39:7 current 6:6,7 9:10 customer 9:17,18,20 10:14,15 12:5 13:18 14:13 16:13 18:23 19:12,14 22:20 24:9 27:6,15,17,18 28:10,21,25 29:3,14 30:5 38:13 customer's 27:21,24 customers 10:12,24 11:24 15:13 18:4 30:8 36:12
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK BERTRAM HIRSCH and IGOR) ROMANOV, on behalf of) themselves and all others) similarly situated,) } Plaintiffs,) } VS.) Case No. 12-cv-1123(DAB)(JCL) CITIBANK, N.A,) } Defendants.) _____) DEPOSITION OF: IGOR ROMANOV THURSDAY, JANUARY 9, 2014 12:00 P.M. Reported by: GINA M. CLOUD CSR No. 6315	3 APPEARANCES: (CONTINUED) ALSO PRESENT: SOSEH KEVORKIAN, Videographer
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	2 Deposition of IGOR ROMANOV, the witness, taken on behalf of the Plaintiffs, on Thursday, January 9, 2014, 12:00 P.M. at 2029 Century Park East, 16th Floor, Los Angeles, California 90067, before GINA M. CLOUD, CSR No. 6315, pursuant to NOTICE. APPEARANCES OF COUNSEL: FOR PLAINTIFFS: LAW OFFICES OF JAMES KELLY BY: JAMES KELLY, ESQ. 244 5th Avenue Suite K-278 New York, New York 10001 (212) 920-5042 Jkelly@jckellylaw.com FOR DEFENDANTS: STROOCK & STROOCK & LAVAN BY: SHANNON PONEK, ESQ. 2029 Century Park East 16th Floor Los Angeles, California 90067 Sponek@stroock.com	4 I N D E X WITNESS EXAMINATION PAGE IGOR ROMANOV (By Mr. Kelly) 7 (By Ms. Ponek) 17 E X H I B I T S NO. DESCRIPTION PAGE Exhibit 36 Concierge Daily 11 Transaction/Transmittal Report Exhibit 37 Bates Nos. CITI-0000155 12 through CITI-0000183 Exhibit 38 Marketplace Addendum, 13 California and Nevada effective January 1, 2010 Exhibit 39 Personal Banker Foundations 14 Participant Guide, North American Consumer DEFENDANTS' EXHIBITS 45 Exhibit 1 Account statement dated 11/1- 11/30/10

<p style="text-align: right;">5</p> <p>1 Exhibit 2 Declaration of Igor Romanov 47 2 In Support of Plaintiff's 3 Opposition to Defendant's 4 Motion to Compel 5 Arbitration and Stay the 6 Action dated April 12, 2012 7 Exhibit 3 Defendant Citibank's First 56 8 Set of Request For 9 Production of Documents 10 dated December 5, 2013 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">7</p> <p>1 EXAMINATION 2 3 BY MR. KELLY: 4 Q. Good afternoon, Mr. Romanov. 5 A. Good afternoon. 6 Q. I'm here to take your deposition. We're 7 going to go maybe about 15, 20 minutes with some 8 questions and then Citibank's counsel will ask you 9 some questions. 10 A. Okay. 11 Q. Can you state your name and address for the 12 record? 13 A. My name is Igor Romanov and my current 14 address at the time case opened, 330 South Reeves 15 Drive, unit 203 in Beverly Hills, California 90212. 16 Q. Can you state for the record when you 17 opened up your accounts at Citibank? 18 A. I don't remember the date, but couple of 19 years ago it was opened. Couple of years ago. It's 20 a Citibank branch where my friend lives in Marina Del 21 Rey. 22 Q. Can you state for the record how the 23 process went when you opened up your account at 24 Citibank? 25 A. Yes, my friend called me and he said since</p>
<p style="text-align: right;">6</p> <p>1 LOS ANGELES, CALIFORNIA, THURSDAY, JANUARY 2 12:00 P.M. 3 4 5 THE VIDEOGRAPHER: Good afternoon, we're on 6 the record at 12:03 p.m. on January 9, 2014. This 7 is the video recorded deposition of Igor Romanov. 8 My name is Soseh Kevorkian here with our court 9 reporter Gina Cloud. We're here from Veritext Legal 10 Solutions at the request of counsel for plaintiff. 11 This deposition is being held at 2029 Century Park 12 East in Los Angeles, California. The caption of 13 this case is Bertram Hirsch, et al. versus Citibank 14 N.A, case number 12-cv-1124(DAB)(JCL). 15 At this time would counsel and all present 16 please identify themselves for the record. 17 MR. KELLY: My name is James Kelly, counsel 18 for plaintiffs. 19 MS. PONEK: Shannon Ponek, counsel for 20 defendant. 21 22 23 IGOR ROMANOV, 24 having been first duly sworn, was 25 examined and testified as follows:</p>	<p style="text-align: right;">8</p> <p>1 you've been gold member, some kind of privilege 2 member in Citibank, you open an account and you 3 receive bonus miles for opening account, checking 4 account. You have to deposit certain amount, \$25,000 5 or \$50,000, certain amount of money, you would get 6 after you make several transaction using your ATM 7 card you would get certain amount of bonus miles, and 8 he told me this is good and convenient and nice based 9 on interest on money you deposited, and I told him I 10 would do the same. He took me to the branch and he 11 met with gentleman Zubair. 12 He was the one taking care of my friend's 13 account because he lived right behind his branch and 14 he said you're welcome as well, because they had me 15 in the system, for some reason I had some banking 16 relationship with Citibank in the past and at that 17 time, I didn't currently have a CD with Citibank as 18 well and we opened, I was told I would get the same 19 thing as my friend did and he just mentioned would he 20 open to my friend Igor Romanov as did you. 21 By the way, my friend is available, I have 22 his phone number, he still lives there and he can be 23 called or contacted, no problem at any time. 24 Q. What's his name? 25 A. Zach Katz, last name K-a -- his son is Glen</p>

<p style="text-align: right;">9</p> <p>1 and he was the one who contacted you, but he is 2 available at any time. I just spoke to him this 3 morning. 4 Q. What Citibank branch was that? 5 A. It's in Marina Del Rey branch in shopping 6 center right in middle of shopping center is the 7 Citibank branch, and the reason I visited my friend, 8 and is he live right behind, so we walked and he 9 introduced me to Mr. Zubair and he is like a private 10 banker, manager, I don't know. He was on the 11 right-hand side on the table, like different position 12 and he opened it for me and that was it. 13 After that I received my bonus miles in 14 certain amount of time and doing certain amount of 15 transaction like they requested. I used my ATM card, 16 I got my miles, and beginning of the year I received 17 1099 for \$1,000, and at that time, I usually around 18 this time I receive the forms from different bank 19 where I was interest earned because I had several CD 20 in different bank institution, and I know for sure I 21 didn't earn that much interest in Citibank because I 22 didn't have a CD and I called, contact the branch and 23 said maybe it's a mistake of some kind. I never 24 received \$1,000, what is this for, and he told me 25 they don't know, they contact me. I spoke to a</p>	<p style="text-align: right;">11</p> <p>1 was an order put into place by the magistrate judge 2 that we wanted to limit the discovery at this point 3 to just the account opening. 4 A. So we're done, okay, no problem. 5 Q. We'll move on. 6 A. Just ask me interrupt because I don't know 7 what you want to hear, so I will tell you. I just 8 tell you the best of my knowledge and best I can. 9 MR. KELLY: I would like to introduce as 10 Plaintiff's Exhibit 36 a document Bates stamped 11 CITI-0000077 through CITI-0000078 titled Concierge 12 Daily Transaction/Transmittal Report. 13 (The document referred to was marked 14 by the reporter as Exhibit 36 for identification 15 and is attached hereto). 16 BY MR. KELLY: 17 Q. If you could turn to the next page, 18 Mr. Romanov. Do you see where you signed here the 19 Citibank card? Was this the card that Mr. Zubair 20 when you signed up to open your accounts presented 21 you for signature? 22 A. This is my signature obviously. 23 Q. Was this card that he presented you, do you 24 recall this card being presented to you? 25 A. Since it's my signature I obviously signed</p>
<p style="text-align: right;">10</p> <p>1 couple times the branch and I spoke to my 2 accountant -- no, I called to Citibank, 1 (800) 3 general office, and I was told I've got this thousand 4 dollars form, IRS form to pay taxes for the mileage I 5 received. I said what does it have to do with that, 6 I really got confused because I didn't understand 7 even the nature of this form because for fact I did 8 not receive \$1,000. 9 I called to my accountant and I told him 10 since -- we calculated like your miles bonus you 11 received opening account equivalent to \$1,000. I 12 said what is the rate then for miles, so I was trying 13 to pay taxes using my miles as well since I got 14 miles, not dollars, so I said I want to pay IRS with 15 the miles and they laugh at me, my accountant said 16 that's not acceptable, IRS does not take miles. 17 Then I called the branch and I said what is 18 the rate for bank and miles, so I have several 19 thousand miles with different airlines and they want 20 exchange it for money -- 21 MS. PONEK: Can I just interrupt, this is 22 beyond the scope of discovery at this point. We're 23 in a very limited stage. 24 BY MR. KELLY: 25 Q. That's fine, what counsel is saying there</p>	<p style="text-align: right;">12</p> <p>1 this one, yes, this is my signature. 2 Q. When he presented you this card, did he 3 explain to you that you were agreeing to certain 4 terms and conditions with Citibank by signing this 5 card? 6 A. No, I wasn't told anything like that, 7 nothing at all. He said you have to sign it here, 8 they gave me a receipt and that was end of story, and 9 he said if you have any banking needs, feel free, 10 come into this branch and I could help you because 11 I'm like private banker, I don't know how you call, 12 but certain type of personal relationship with the 13 clients, but I signed something and I was given like 14 a receipt for my deposit. I wrote a check for 15 whatever was the amount, 25 I think thousand dollars 16 or more and that's about it. 17 Q. Did he provide you any other documents? 18 A. No. He gave a receipt for my deposit and 19 then he said you receive by mail like a statement. 20 MR. KELLY: I would like to enter 21 Plaintiff's Exhibit 37, which is a document Bates 22 stamped CITI-0000155 through CITI-0000183. 23 (The document referred to was marked 24 by the reporter as Exhibit 37 for identification 25 and is attached hereto)</p>

13

1 BY MR. KELLY:
2 Q. Can you take a look at this document,
3 Mr. Romanov,
4 A. Uh-huh.
5 Q. Do you recognize this document?
6 A. Not really.
7 Q. Did Mr. Zubair provide you this document
8 when you opened up your account?
9 A. No. He only gave me a receipt for opening
10 the account, writing my checks, and this is basically
11 my receipt, and he said you'll receive everything by
12 mail. He just told me I have to use certain amount
13 of time ATM card in order to qualify for the thing,
14 and they want to have more business and bring new
15 funds into the bank, and he said thank you for your
16 business and thank you for coming in, and that's
17 about it, because my question was about the mileage
18 and he told me that you receive miles after you use
19 it, I don't remember five or six times during a
20 month's period, something like that. I don't
21 remember, but that's what it was and that's about it.
22 MR. KELLY: I would like to introduce as
23 Plaintiff's Exhibit 38 a document Bates stamped
24 CITI-0000029 through CITI-0000076. It's titled
25 Marketplace Addendum, California and Nevada

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1 effective January 1, 2010.
2 (The document referred to was marked
3 by the reporter as Exhibit 38 for identification
4 and is attached hereto).
5 BY MR. KELLY:
6 Q. Do you recognize that document Mr. Romanov?
7 A. No.
8 Q. Did Mr. Zubair provide you that document
9 when you opened up your account at Citibank?
10 A. No, I haven't got anything.
11 Q. Has Citibank ever provided you that
12 document?
13 A. I can't recall that, no, because it was only
14 specific discussion which I had with Mr. Zubair. I
15 ask him is there any fee involved, something extra
16 fee because I opened -- the reason I opened an
17 account is because my friend asked me, it would be
18 nice, that's all, but I haven't got this one.
19 MR. KELLY: I would like to introduce as
20 Plaintiff's Exhibit 39 a document Bates stamped
21 CITI-0000119 through CITI-0000132. It's titled
22 Personal Banker Foundations Participant Guide, North
23 American Consumer.
24 (The document referred to was marked
25 by the reporter as Exhibit 39 for identification

15

1 and is attached hereto).
2 BY MR. KELLY:
3 Q. Mr. Romanov, can you take a look at this
4 document and in particular turn to page 123. Do you
5 see where it says "Customer Care Checklist"?
6 A. I have numbers on the pages.
7 Q. Do you see where it says "Customer Care
8 Checklist" there?
9 A. Yes.
10 Q. Did Mr. Zubair provide this to you when you
11 opened up your account?
12 A. First time I see this paper, no.
13 Q. Did he explain and give to you a client
14 manual as it says below there?
15 A. No, I haven't got anything besides the
16 receipt for the deposit I was given, and he is nice
17 gentleman, he kindly explain me as far as fee and how
18 many times do I use, and I usually don't use a lot of
19 ATM card and he said you have to use it like shopping
20 and this and that, and I asked him how to use it
21 because I have no experience with doing it.
22 I remember I deposit additional like
23 thousand dollars just to have. He asked me to open
24 this account and that account, and I guess it's
25 benefit, he was an employee somehow and I said you

16

1 nice to me, I'll be more than happy to do if it
2 doesn't cost me extra fees.
3 Q. Did Mr. Zubair ever explain to you that by
4 opening up the accounts that you opened up at
5 Citibank, that you were entering into an arbitration
6 agreement with Citibank?
7 A. No. I know for sure because I didn't even
8 know what arbitration agreement means, just a lack of
9 legal education probably. I don't know what it is, I
10 never heard this.
11 Q. Did Mr. Zubair at the end or at any time
12 during the sign up process ask you to meet with his
13 manager at the branch?
14 A. No, I never met anybody else.
15 MR. KELLY: I'm done. We're done here.
16 MS. PONEK: Okay. Can we go off the record
17 and get situated.
18 THE VIDEOGRAPHER: Going off the record at
19 12:18 p.m.
20 (Recess taken)
21 THE VIDEOGRAPHER: We're going back on the
22 record at 12:21 p.m.
23 ///
24 ///
25 ///

<p style="text-align: right;">17</p> <p>1 EXAMINATION</p> <p>2</p> <p>3 BY MS. PONEK:</p> <p>4 Q. Mr. Romanov, I'm Shannon Ponek, counsel for</p> <p>5 Citibank in this action.</p> <p>6 A. We met?</p> <p>7 Q. Yes, we met earlier today before we started</p> <p>8 the deposition. I'm going to ask you some</p> <p>9 additional questions and I just want your honest</p> <p>10 answers. If you don't understand any of my</p> <p>11 questions, please let me know and I'll try to</p> <p>12 rephrase them.</p> <p>13 A. Thank you.</p> <p>14 Q. I'm entitled to your best answer today so I</p> <p>15 don't want you to guess, but I am entitled to a best</p> <p>16 estimate, so if I asked you what you estimate the</p> <p>17 length of this table to be, you could do that</p> <p>18 because you could see the table, right?</p> <p>19 A. Right.</p> <p>20 Q. But if I asked you to estimate the length</p> <p>21 of my desk in my office, you wouldn't be able to do</p> <p>22 that because you've never seen it, correct?</p> <p>23 A. Exactly.</p> <p>24 Q. So I'm entitled to your best estimate but I</p> <p>25 don't want you to guess. Do you understand that?</p>	<p style="text-align: right;">19</p> <p>1 Q. And it's under the same penalties of</p> <p>2 perjury apply here in the same manner as if you were</p> <p>3 giving testimony in a court of law?</p> <p>4 A. Yes.</p> <p>5 Q. Have you taken any prescription or</p> <p>6 nonprescription medication in the last 24 hours that</p> <p>7 would affect your memory?</p> <p>8 A. No.</p> <p>9 Q. I'm going to start with some background</p> <p>10 information. Did you attend any college or graduate</p> <p>11 school?</p> <p>12 A. Yes.</p> <p>13 Q. What college did you attend?</p> <p>14 A. Graduated pharmaceutical school in Soviet,</p> <p>15 but it was in Soviet Union.</p> <p>16 Q. And what is the name of the school?</p> <p>17 A. Pharmacy school.</p> <p>18 Q. Is there a name for the actual school?</p> <p>19 A. No, they call it pharmacy school. Like</p> <p>20 eight in city, pharmacy school, medical school,</p> <p>21 wasn't named like it is here. It was only one.</p> <p>22 Q. Did you receive any certificate or diploma</p> <p>23 at the pharmacy school?</p> <p>24 A. I complete the school but physically I did</p> <p>25 not receive diploma because I left as a political</p>
<p style="text-align: right;">18</p> <p>1 A. Okay, yes.</p> <p>2 Q. Have you ever had your deposition taken</p> <p>3 before?</p> <p>4 A. In this case or generally?</p> <p>5 Q. Generally.</p> <p>6 A. I think it was a deposition, I don't know</p> <p>7 the legal definition of deposition, but I met once, I</p> <p>8 got like a car accident and I spoke to insurance</p> <p>9 adjuster, but it was like 15 years ago, maybe 18 or</p> <p>10 something like that. I don't know if you call it</p> <p>11 deposition or statement taken. I just don't want to</p> <p>12 get wrong.</p> <p>13 Q. Sitting in a room like this with a court</p> <p>14 reporter?</p> <p>15 A. Not with a camera or stuff like that, no.</p> <p>16 Q. Like I said before I'm going to ask you</p> <p>17 questions. Give some time for your counsel to</p> <p>18 object if he has any objections and then you're</p> <p>19 going to answer them. If you need any break, let me</p> <p>20 know, and again, if you don't understand a</p> <p>21 question --</p> <p>22 A. Of course I'm ask you, thank you.</p> <p>23 Q. Do you understand that your testimony given</p> <p>24 here today is under oath?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">20</p> <p>1 refugee to United States was one of the reasons.</p> <p>2 Q. Do you have any other special training?</p> <p>3 A. No, no.</p> <p>4 Q. Any other certifications or diplomas, other</p> <p>5 than what you would have received at the pharmacy</p> <p>6 school?</p> <p>7 A. No.</p> <p>8 Q. Can you describe your employment history</p> <p>9 since you came to the United States?</p> <p>10 A. Since I came, when I came, I worked in</p> <p>11 pharmacy. I worked in the pharmacy back in San Diego</p> <p>12 where I came. After that I work and own a taxicab</p> <p>13 and taxicab company in Los Angeles, Bell Cab, and</p> <p>14 then since then I was working managing acupuncture</p> <p>15 office. I couldn't tell you exact dates because it</p> <p>16 was way too long ago.</p> <p>17 Q. Let's just go back for a minute. When did</p> <p>18 you come to the United States?</p> <p>19 A. March of 1990.</p> <p>20 Q. For about how long were you in a pharmacy,</p> <p>21 working in a pharmacy after that?</p> <p>22 A. Eight months -- less than a year. I believe</p> <p>23 so. I can't remember.</p> <p>24 Q. Then you started doing your own taxicab</p> <p>25 after that?</p>

<p style="text-align: right;">21</p> <p>1 A. Right, I moved to Los Angeles and after 2 that, I don't remember the dates, I couldn't tell you 3 the dates. 4 Q. Approximately 1991? 5 A. Probably so. 6 Q. About how long did you do that? 7 A. Like I own it for about a year, but I worked 8 there on and off, within a couple years probably. 9 Q. And then you started managing an 10 acupuncture office? 11 A. Yes. 12 Q. And approximately when did you begin doing 13 that? 14 A. Probably '93, '92, '93, I don't remember. I 15 just give an approximate date. I could be wrong. It 16 could be '94. If you tell me '95, then I don't take 17 it for granted. 18 Q. Are you still managing the acupuncture 19 office? 20 A. No, no, no, it was until probably '98. 21 Since then I owned the business. I own the business 22 for financial business. 23 Q. So starting 1998 you began owning your own 24 financial -- 25 A. Yes --</p>	<p style="text-align: right;">23</p> <p>1 Q. What exactly did A-1 financial do? 2 A. Lending and money -- miscellaneous financial 3 services is what I got license for. Miscellaneous 4 financial services like a bill pay, money transfer. 5 We accept basically work as an agent of major company 6 like Western Union. 7 Q. So do you have your own individual 8 customers that come into the office and ask for 9 financial help? 10 A. Yes, kind of that, but I didn't deal with 11 customers directly because it was an employee who 12 deal with that. Each office, which I used to own six 13 of them, so they ran, a couple of people worked 14 there. I didn't personally talk to customers. 15 Q. When the customers came in, and you were 16 offering them financial assistance, what were the 17 general type of financial -- 18 A. Loans. 19 Q. Let me finish asking my question before you 20 go ahead and answer. Sometimes it's pretty easy to 21 know what my next question is going to be, but let 22 me answer it so that the court reporter, she's 23 taking down everything we say and if we're talking 24 over each other, then she can't get what we're both 25 saying at the same time, so let me finish a question</p>
<p style="text-align: right;">22</p> <p>1 Q. What's the title of that business? 2 A. I was the president of the company. 3 Q. What is the name of the business that you 4 own? 5 A. A-1 Financial. I don't own it anymore 6 because my partner passed away year and a half ago. 7 It was dissolved and sold. 8 Q. So you were the president at A-1? 9 A. A, as in Anna-1, financial, which was closed 10 like already like six years ago. 11 Q. So from approximately 1998 to approximately 12 2007 -- 13 A. I would say 2006, 2005, something like that. 14 Then I sold it and kept it as a finance company for 15 different corporation. 16 Q. What were your responsibilities at the 17 company, at A-1 Financial? 18 A. Run and developing the company, managing the 19 opening multiple occasions, and I was in charge of 20 general management I would say. 21 Q. As part of your duties, did you ever review 22 contracts for the company? 23 A. For my company, did they review? Like lease 24 contracts I saw, right. Leases basically. No 25 contract because for that I use an attorney.</p>	<p style="text-align: right;">24</p> <p>1 and remember to give your counsel a moment to see if 2 he wants to object and then answer. Okay? 3 A. Uh-huh. 4 Q. So you at A-1 Financial, you gave 5 individual customers loans? 6 A. Yes. 7 Q. As part of the those transactions, did you 8 have agreements with customers? 9 A. Of course. 10 Q. After owning A-1 Financial, what did you 11 do? 12 A. I own another after company lead to the 13 sickness of my partner. I own similar type of 14 company which own similar type of business which pay 15 partial is sold like full five years ago, and last 16 branch I owned, I sold it, last year. 17 Q. So starting from 2005 until approximately 18 last year, you owned a different type of financial 19 company? 20 A. Yes, same type, but different corporation 21 because I own it solely. 22 Q. What's the name of the corporation? 23 A. American cash market, which I sold last 24 year. 25 Q. Who did you sell it to?</p>

<p style="text-align: right;">25</p> <p>1 A. It was a human, it was a person.</p> <p>2 Q. What is the person's name?</p> <p>3 A. Vlad, V-l-a-d, and I can't remember his last</p> <p>4 name.</p> <p>5 Can I ask you a question, how is related to</p> <p>6 my Citibank?</p> <p>7 Q. I'm just getting a general --</p> <p>8 A. It's no problem, I don't know how the legal</p> <p>9 system work, I don't want to even discuss who I sold</p> <p>10 it for. I think it's a trade secret. I don't think</p> <p>11 it's related to the case and I don't want to discuss</p> <p>12 it to disclose it, maybe he won't be even happy. Is</p> <p>13 that for me to tell you that, if it's okay? Unless</p> <p>14 it's mandatory. I just don't understand how the</p> <p>15 system work.</p> <p>16 MS. KELLY: I'll object to that question.</p> <p>17 BY MS. PONEK:</p> <p>18 Q. If there is a problem with any of my</p> <p>19 questions --</p> <p>20 A. Like certain question do I have right to</p> <p>21 refuse to answer, like certain thing I don't want to</p> <p>22 discuss? Like I don't want to disclose name of the</p> <p>23 person who I sold it for and how much I sold it for</p> <p>24 and thing like that.</p> <p>25 Q. That's fine, I'm not going to go into</p>	<p style="text-align: right;">27</p> <p>1 you opened an account at Citibank; is that correct?</p> <p>2 A. I don't remember what?</p> <p>3 Q. That you don't recall the date that you</p> <p>4 opened your Citibank account?</p> <p>5 A. Date, no, I do not recall the date at this</p> <p>6 time, at this present moment.</p> <p>7 Q. Was it approximately October 2010?</p> <p>8 A. Yes, it was end of '10 probably.</p> <p>9 Q. Do you know what types of accounts you</p> <p>10 opened at Citibank?</p> <p>11 A. Savings and one account, one I don't know</p> <p>12 how you call it, I deposit thousand dollars to use to</p> <p>13 do certain amount of transactions.</p> <p>14 Q. It was a checking account?</p> <p>15 A. The one for 25, it was a savings account,</p> <p>16 but the on one checking account they ask me to use</p> <p>17 ATM for. I opened two accounts. One for \$1,000 and</p> <p>18 one for \$25,000.</p> <p>19 Q. And you opened your accounts in person --</p> <p>20 A. Yes.</p> <p>21 Q. -- at a -- let me finish the question.</p> <p>22 A. I'm sorry, I apologize.</p> <p>23 Q. You opened the account at the Marina Del</p> <p>24 Rey branch; is that correct?</p> <p>25 A. Yes, that's correct.</p>
<p style="text-align: right;">26</p> <p>1 detail there.</p> <p>2 A. You can ask me, I don't want to discuss it.</p> <p>3 MR. KELLY: You can state it's</p> <p>4 confidential. It's confidential.</p> <p>5 BY MS. PONEK:</p> <p>6 Q. And remember not to interrupt each other</p> <p>7 because the court reporter needs to take everything</p> <p>8 down.</p> <p>9 So from 2005 to approximately 2012, you</p> <p>10 owned American Cash Market?</p> <p>11 A. Yes.</p> <p>12 Q. What type of business did American Cash</p> <p>13 handle?</p> <p>14 A. Miscellaneous financial services.</p> <p>15 Q. Similar to A-1?</p> <p>16 A. Very similar, less service was provided.</p> <p>17 Q. What do you mean by that?</p> <p>18 A. It means I did not take bill payment for</p> <p>19 phone company, for instance or gas company or</p> <p>20 Department of Water and Power, and I raise the price</p> <p>21 of money order, if you want to know. Used to be 90</p> <p>22 cents, I sold it for \$1 after that. That's what</p> <p>23 makes difference between A-1 Financial and American</p> <p>24 Cash Market.</p> <p>25 Q. You stated earlier you don't recall when</p>	<p style="text-align: right;">28</p> <p>1 Q. When you opened the account, was anybody</p> <p>2 with you?</p> <p>3 A. Yes.</p> <p>4 Q. Who was with you?</p> <p>5 A. It was my friend, his name is Zach Katz.</p> <p>6 Q. Do you know Zach Katz's address?</p> <p>7 A. I don't remember his address, but I have</p> <p>8 phone number. If you would let me call him right</p> <p>9 now, I could get his address.</p> <p>10 Q. That's okay.</p> <p>11 A. I have a phone number for him. Visually I</p> <p>12 know it's on Fiji Drive.</p> <p>13 Q. Can you state his phone number, please?</p> <p>14 A. Yes, of course. You should have his</p> <p>15 information because he received a lot of paperwork</p> <p>16 from you guys, from the law firm. Phone number is</p> <p>17 (310) 804-9487.</p> <p>18 Q. Thank you.</p> <p>19 A. That's mobile number I use to call, and his</p> <p>20 work number I don't remember.</p> <p>21 Q. That's sufficient, thanks. Are you aware</p> <p>22 Zachary Katz also sued Citibank?</p> <p>23 A. No. We went together. We file with him,</p> <p>24 how you call it, small claim court, we went to small</p> <p>25 claim court and came a couple times, and after that</p>

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1 we did not communicate, but I told him I would have
2 deposition today and he told me if you need to speak
3 to him, he is available. That's what I was told.

4 Q. So when was the last time you spoke with
5 Zachary Katz?

6 A. This morning.

7 Q. What did you discuss?

8 A. We discussed how cold is it today and after
9 that I told him I have a deposition with you guys and
10 he said he is available, feel free to call, "if you
11 need me," he said, "I'm available for assistance."

12 Q. Did you discuss what your testimony would
13 be about today?

14 A. No.

15 Q. Have you ever discussed this case with
16 Zachary Katz?

17 A. We file together as I said the small claim
18 court. We went there and it went the George told me,
19 he obviously told me I would rule in your favor, but
20 Citibank took your case into different court and
21 nothing they can do, and then I didn't know how to
22 handle it technically because lack of I don't know,
23 technicality of trial and legal stuff, that's why I
24 start looking online and how do I find the counsel,
25 James Kelly.

30

1 Q. Did you ever discuss with Zachary Katz
2 whether you received the client manual when you
3 opened your account at Citibank?

4 A. No, I didn't discuss it, no. We didn't
5 speak about it.

6 Q. Why did you choose to open your account in
7 person?

8 A. I didn't know there was any other way to
9 open an account besides physical. I didn't know such
10 option exist besides to come into the bank. I still
11 believe now that you have to be present. That's why
12 I open it in person.

13 Q. Was anyone other than Zachary Katz with you
14 the day that you opened the account?

15 A. No.

16 Q. Prior to account 2010 when you opened your
17 account, had you ever been to Citibank's Marina Del
18 Rey branch before?

19 A. No.

20 Q. Do you know who Bertram Hirsch is, he is
21 another plaintiff in this action?

22 A. Who?

23 Q. Bertram Hirsch.

24 A. I read this name but I don't know who.

25 Q. Have you ever spoken with him?

31

1 A. Never.

2 Q. Prior to filing the lawsuit, did you know
3 who Mr. Hirsch was?

4 A. No.

5 Q. When you first walked into the branch of
6 the Marina Del Rey branch in October 2010 to open
7 your accounts, who did you speak with?

8 A. I think his name is Zubair. I have his
9 business card. Zubair. I'm not sure if it's a first
10 or last name but I call him Zubair and I guess it was
11 okay. My friend, Mr. Katz call him the same way.

12 Q. It's his last name. Did you speak with a
13 teller before speaking with Mr. Zubair?

14 A. No.

15 Q. When you approached Mr. Zubair, what did
16 you say?

17 A. Actually I called him and schedule an
18 appointment. I call him and he said you are welcome
19 to come in, and my friend said we would come into the
20 branch to confirm I get the same type of account as
21 he had.

22 Q. So then when you went into the branch, what
23 did you and Mr. Zubair discuss?

24 A. Nothing. He told me open an account, thank
25 you for coming, and he like to meet me and he said we

32

1 would like to have you as a customer in Citibank and
2 I'll open, it's the same account as your friend did
3 and I ask him detail as far as like monthly fees, and
4 he told me there is going to be none, and I said what
5 should I do in order to get mileage, and he said you
6 have to use ATM card, and how to use it. I don't use
7 an ATM card at all and he explained to me how to do
8 it and that was it.

9 Q. Let's just take a step back. Did
10 Mr. Zubair take any of your personal information
11 down?

12 A. Actually, I remember that I gave him my
13 driver's license and he looked in his computer and he
14 said, "I have you in the system, because in the past
15 I had credit cards with Citibank, I'm sure I had like
16 long time ago, line of credit eight, nine, ten years
17 ago with Citibank, so I guess they have the same
18 system. They must have. He must know who I am. My
19 address didn't change for last nine years.

20 Q. Did you need to provide him with your
21 social security number, anything like that?

22 A. Yes, he asked me for my social. He asked me
23 certain things put into the system like address 330.

24 Q. So he asked you for your driver's license,
25 your social security number and your address,

<p>33</p> <p>1 correct?</p> <p>2 A. Right.</p> <p>3 Q. Did he ask you for any other information?</p> <p>4 A. I think, I don't remember if he personally</p> <p>5 asked me or asked me over the phone, the information</p> <p>6 of my American airline, how is it called, mileage</p> <p>7 account number, so where the miles supposed to go to.</p> <p>8 I don't remember this part even he asked me which</p> <p>9 stage they asked me for this account, but I</p> <p>10 definitely was asked because they asked me where to</p> <p>11 forward the bonus miles and I gave him my American</p> <p>12 Airline account information.</p> <p>13 Q. Did you provide him with any other</p> <p>14 information than the information we've discussed so</p> <p>15 far?</p> <p>16 A. My address, my social, like I said, my</p> <p>17 driver's license information, I guess that's it. I</p> <p>18 don't remember if he asked me for second type of I.D.</p> <p>19 or not. Sometimes bank ask for, but I do bank with</p> <p>20 many banks so I don't remember.</p> <p>21 Q. You don't remember, okay.</p> <p>22 A. Probably he asked for I have with me several</p> <p>23 cards which could be taken as a second identity. As</p> <p>24 a second identification.</p> <p>25 Q. Did anyone other than Mr. Zubair assist you</p>	<p>35</p> <p>1 accounts; is that correct?</p> <p>2 A. I asked him how many times should I use ATM</p> <p>3 card in order to be qualified for this promotion. He</p> <p>4 told me it's very important to use certain amount,</p> <p>5 probably six times within the month period in order</p> <p>6 to do it, and I asked him is ATM card charge fees or</p> <p>7 something like that, because I did not use it in the</p> <p>8 past.</p> <p>9 Q. Did you ask Mr. Zubair any other questions?</p> <p>10 A. Ask him when I would receive my bonus miles</p> <p>11 and how long should I keep my money in a bank, and</p> <p>12 because some banks they charge you penalty if you</p> <p>13 withdraw funds, and I said I would open it as long as</p> <p>14 it benefit you and me and I won't be penalized for</p> <p>15 closing if I don't like it for any reason, or if I</p> <p>16 want to move funds for different use.</p> <p>17 Q. Did you ask him any other questions other</p> <p>18 than the ones you've already stated?</p> <p>19 A. No, I just ask him when my miles would be</p> <p>20 deposited into my accounts. Ask him on savings</p> <p>21 account what interest it would earn and it was</p> <p>22 relatively low, but it was okay.</p> <p>23 Q. Did you ask him any other questions?</p> <p>24 A. Not that I can remember right now.</p> <p>25 Q. So after Mr. Zubair took down your personal</p>
<p>34</p> <p>1 when you were at the Citibank branch --</p> <p>2 A. No, not at that time, no.</p> <p>3 MR. KELLY: Let her finish.</p> <p>4 THE WITNESS: I'm sorry.</p> <p>5 BY MS. PONEK:</p> <p>6 Q. It will be an interesting transcript when</p> <p>7 we're talking over each other.</p> <p>8 When you were opening your account, where</p> <p>9 in the branch were you sitting?</p> <p>10 A. Next to Mr. Zubair's desk. He has like a</p> <p>11 table and I sit in front of him, my friend Zach Katz</p> <p>12 is like Mr. Kelly is sitting right now, in the same</p> <p>13 position.</p> <p>14 Q. Approximately how long did it take you to</p> <p>15 open that account?</p> <p>16 A. It wasn't long, it was 15, 20 minutes.</p> <p>17 Q. Did Mr. Zubair ask you any questions while</p> <p>18 you were opening the account?</p> <p>19 A. Why, I don't remember that, he was</p> <p>20 appreciate that I open an account and bringing them</p> <p>21 more business.</p> <p>22 Q. You stated earlier that you asked</p> <p>23 Mr. Zubair questions such as how to use an ATM card,</p> <p>24 how many times you had to use your ATM card, and</p> <p>25 whether you would be charged a fee for opening the</p>	<p>36</p> <p>1 information in the computer, what happened next?</p> <p>2 A. I wrote the check. I had the check with me</p> <p>3 and I asked him how I was make it payable to and I</p> <p>4 think it was two checks. I don't remember, I think</p> <p>5 one for thousand dollars. I don't remember, it was</p> <p>6 two items, I believe, if I'm correct.</p> <p>7 Q. Earlier we entered as an exhibit, Exhibit</p> <p>8 36, and the second page of that exhibit is the</p> <p>9 signature card. Did you write the check before or</p> <p>10 after you signed the signature card?</p> <p>11 A. I cannot tell you that right now, I don't</p> <p>12 remember. I don't remember what was -- what comes</p> <p>13 first.</p> <p>14 Q. You stated earlier this is your signature?</p> <p>15 A. Yes, it is my signature, looks like my</p> <p>16 signature.</p> <p>17 Q. Do you remember signing this signature</p> <p>18 card?</p> <p>19 A. In a bank you always sign a signature card</p> <p>20 for opening account. It's standard procedure, I</p> <p>21 guess.</p> <p>22 Q. I'm asking something just a little bit</p> <p>23 different. Do you have a specific recollection</p> <p>24 about actually signing this Citibank signature card?</p> <p>25 A. As I told you I have accounts in numerous</p>

<p style="text-align: right;">37</p> <p>1 banks and every time I open an account, they ask me</p> <p>2 to sign the card, and I guess it was Citibank I have</p> <p>3 an account in five or six banks at the same time and</p> <p>4 some of them have couple accounts, several accounts,</p> <p>5 so I guess it was one of them and that's all I could</p> <p>6 say.</p> <p>7 Q. I'm asking something just a little bit</p> <p>8 different. I understand that you realize that</p> <p>9 there's a process when you open a new account at a</p> <p>10 bank that you typically sign a signature card?</p> <p>11 A. Yes, always.</p> <p>12 Q. So I'm asking you if you have a specific</p> <p>13 recollection of signing this actual signature card</p> <p>14 at Citibank?</p> <p>15 A. It's a copy. If you would bring original</p> <p>16 card, maybe I would say for sure, but I can't tell</p> <p>17 you right now, it's three years since then. Of</p> <p>18 course I signed the signature card. Was it this</p> <p>19 card? Because like I said I have numerous account</p> <p>20 for Citibank. Maybe this card from my CD which I</p> <p>21 opened at Citibank as well. I have a CD currently.</p> <p>22 MR. KELLY: Maybe you can rephrase and ask</p> <p>23 him does he recall Mr. Zubair presenting him a</p> <p>24 signature card or this signature card and him</p> <p>25 signing it.</p>	<p style="text-align: right;">39</p> <p>1 Q. Did you ask any questions after signing the</p> <p>2 signature card?</p> <p>3 A. About signature card no questions were</p> <p>4 asked, because as far as I know, it's a standard</p> <p>5 banking procedure.</p> <p>6 Q. Do you see there is a box at the top of the</p> <p>7 signature card that says "name signer" and your name</p> <p>8 is in there, Igor Romanov?</p> <p>9 A. Yes.</p> <p>10 Q. And then underneath it there is a sentence</p> <p>11 that says "by signing below, I, one, certify my tax</p> <p>12 status; two, agree to be bound by any agreement</p> <p>13 governing any account opened in title indicated in</p> <p>14 this card." Do you see that?</p> <p>15 A. Right now I could see it, yes.</p> <p>16 Q. Did you ever ask anyone about this</p> <p>17 statement on the signature card?</p> <p>18 A. No.</p> <p>19 Q. Either before signing it or after signing</p> <p>20 it?</p> <p>21 A. No.</p> <p>22 Q. Did you ever ask about the agreement that's</p> <p>23 referenced in this sentence in the signature card?</p> <p>24 A. No, I did not. I would have to receive any</p> <p>25 type of agreement. All I know I put my social</p>
<p style="text-align: right;">38</p> <p>1 BY MS. PONEK:</p> <p>2 Q. That's a great question.</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall him presenting you a</p> <p>5 signature card and signing it?</p> <p>6 A. Yes, exactly.</p> <p>7 Q. Do you recall when in the process you</p> <p>8 signed the signature card? I know before you stated</p> <p>9 you weren't sure if you wrote out the checks to open</p> <p>10 the accounts or if your received the signature card</p> <p>11 first, but do you recall when you received the</p> <p>12 signature card?</p> <p>13 A. I can't tell what come first, what come</p> <p>14 second. It happen like the same time, like you write</p> <p>15 a check.</p> <p>16 Q. When you were given a signature card to</p> <p>17 sign, did Mr. Zubair say anything to you?</p> <p>18 A. He just said you have to sign here and sign</p> <p>19 here. It's a signature card.</p> <p>20 Q. Did he say anything else that you recall?</p> <p>21 A. No, I knew it's a signature card, you have</p> <p>22 to sign it.</p> <p>23 Q. Did you ask any questions about the</p> <p>24 signature card before signing it?</p> <p>25 A. No, I did not.</p>	<p style="text-align: right;">40</p> <p>1 security number because I earned an interest on</p> <p>2 savings account and I should receive it, usually I</p> <p>3 receive from all banks interest for the money earned</p> <p>4 with the bank, tax form for the interest I earned.</p> <p>5 Q. Did you ask anyone if you received the</p> <p>6 agreement?</p> <p>7 MR. KELLY: Objection, it doesn't state</p> <p>8 that there is an actual agreement in that sentence.</p> <p>9 It states any agreement, which could be read that</p> <p>10 there is no agreement.</p> <p>11 BY MS. PONEK:</p> <p>12 Q. Let me rephrase the question. Did you ever</p> <p>13 ask about the agreement referenced in the signature</p> <p>14 card?</p> <p>15 A. No, I did not ask.</p> <p>16 Q. Did you ask what it was?</p> <p>17 A. No, I did not ask because I was under</p> <p>18 impression that it was a bank employee telling me,</p> <p>19 it's still an explanation of what's going to happen.</p> <p>20 He is representative of Citibank basically. I told</p> <p>21 to not Mr. Zubair, Citibank.</p> <p>22 Q. You stated earlier that you received a</p> <p>23 receipt for account opening after you opened the</p> <p>24 accounts, correct?</p> <p>25 A. Yes, I think so.</p>

<p style="text-align: right;">41</p> <p>1 Q. And you received or signed the signature</p> <p>2 card; is that correct?</p> <p>3 A. Yes, I did.</p> <p>4 Q. Were you shown any other documents during</p> <p>5 the account opening process?</p> <p>6 A. No.</p> <p>7 Q. Did you receive any folder that had any</p> <p>8 documents in it?</p> <p>9 A. No.</p> <p>10 Q. Were you provided with any documents at any</p> <p>11 time during the account opening process, other than</p> <p>12 the signature card and the account receipt?</p> <p>13 A. No.</p> <p>14 Q. Did you think it was weird that you weren't</p> <p>15 handed any other documents while you were opening</p> <p>16 the account?</p> <p>17 A. No, I did not because they already had me in</p> <p>18 the system as a customer. That's why I was pretty</p> <p>19 sure they have all information they need and they</p> <p>20 provided me everything I need to know.</p> <p>21 Q. You stated earlier that you had several</p> <p>22 accounts open at different banks during this time;</p> <p>23 is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. When you opened those accounts, did you</p>	<p style="text-align: right;">43</p> <p>1 year, or this year, but I've been having it for</p> <p>2 around four years, I think. By the way, it was also</p> <p>3 open in October. I have at home records which</p> <p>4 indicates exact date when I opened the CD.</p> <p>5 Q. Where do you store those records that show</p> <p>6 when you opened the CD?</p> <p>7 A. At home.</p> <p>8 Q. Where in your house?</p> <p>9 A. I have files --</p> <p>10 MR. KELLY: Objection, this is outside I</p> <p>11 believe --</p> <p>12 THE WITNESS: You mean which place</p> <p>13 physically?</p> <p>14 MR. KELLY: When I object -- I believe this</p> <p>15 is outside the discovery parameters set by</p> <p>16 magistrate James Cott.</p> <p>17 MS. PONEK: I'll move on.</p> <p>18 Q. You stated that you received a receipt for</p> <p>19 the account opening when you opened the accounts at</p> <p>20 Citibank, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Where did you put those documents?</p> <p>23 A. In a pocket.</p> <p>24 Q. And when you got home that day, did you</p> <p>25 store those documents anywhere?</p>
<p style="text-align: right;">42</p> <p>1 receive any documents while opening those accounts?</p> <p>2 A. Sometimes they give you like new customers,</p> <p>3 they give you like a folder, large side folder with</p> <p>4 some information, a contract, similar to this type of</p> <p>5 client manual when you open, but if it's existing</p> <p>6 customer, not as I remember. If it's a business</p> <p>7 account, obviously I was given different information</p> <p>8 and I received also business type of like a brochure,</p> <p>9 something from a bank, but if it's a personal</p> <p>10 checking account, like for instance I have it in</p> <p>11 Union Bank, I have a CD and I have -- not CD but</p> <p>12 money market, personal, different type of checking</p> <p>13 account in order to avoid bank fees you have to have</p> <p>14 certain amount of accounts and hold certain amount of</p> <p>15 money there, and I received it initially when I</p> <p>16 opened new account.</p> <p>17 Q. Prior to opening the accounts in October</p> <p>18 2010 at Citibank, did you have any other Citibank</p> <p>19 accounts? And I'm not talking about credit cards,</p> <p>20 I'm talking about a checking or savings account at</p> <p>21 Citibank?</p> <p>22 A. I remember I had a checking account of some</p> <p>23 kind but I don't remember an exact date and I</p> <p>24 currently even have the CD with Citibank. I bought</p> <p>25 it for five years CD and mature date I think is next</p>	<p style="text-align: right;">44</p> <p>1 A. Yes, usually I do, I have like every month</p> <p>2 folder for tax purposes for next year, but for this</p> <p>3 particular case I didn't even need it because I wrote</p> <p>4 them by check, it's my receipt. It has double</p> <p>5 function as a monetary instrument, and it's a</p> <p>6 receipt.</p> <p>7 Q. So when you returned home from the bank</p> <p>8 that day, did you take the account opening receipt</p> <p>9 and store it in the monthly folder?</p> <p>10 A. I believe so. I can't recall it right now</p> <p>11 for sure where did I put the physical. It's where I</p> <p>12 put. Usually I put all my receipts in the same</p> <p>13 place, certain amount of time.</p> <p>14 Q. Can you look at the document marked as</p> <p>15 Exhibit 37. Other than today, have you ever seen</p> <p>16 this document before?</p> <p>17 A. No. Maybe I saw it, but long time ago, I</p> <p>18 don't think so.</p> <p>19 Q. Have you ever reviewed this document before</p> <p>20 today?</p> <p>21 A. No, even today I do not remember it yet.</p> <p>22 Q. Have you ever accessed Citibank's account,</p> <p>23 online account system? It's www.Citibank.on</p> <p>24 line.com. Have you ever accessed that website?</p> <p>25 A. I don't think so.</p>

<p style="text-align: right;">45</p> <p>1 Q. You've never logged in to review your 2 account? 3 A. No. I try not to do online banking. For 4 security. 5 MR. KELLY: I'm going to mark as 6 Defendant's Exhibit 1 an account statement dated 7 November 1 to November 30, 2010. 8 (The document referred to was marked 9 by the reporter as Exhibit 1 for identification 10 and is attached hereto). 11 MR. KELLY: I'm going to object to the 12 entry of this exhibit as outside the parameters of 13 Magistrate James Cott's order. 14 MS. PONEK: I understand your objection, 15 but I'm going to continue. 16 Q. Have you ever seen this document before? 17 A. Yes, I receive by mail, it's a bank 18 statement, yes. 19 Q. It's an account statement for your CitiGold 20 account at Citibank, correct? 21 A. Right. 22 Q. Did you receive monthly account statements 23 from Citibank? 24 A. By mail, yes. 25 Q. And did you review them?</p>	<p style="text-align: right;">47</p> <p>1 representation on the record that they would not be 2 pursuing an estoppel argument. 3 MS. PONEK: I'm going to mark as 4 Defendant's Exhibit 2 the Declaration of Igor 5 Romanov In Support of Plaintiff's Opposition to 6 Defendant's Motion to Compel Arbitration and Stay 7 the Action dated April 12, 2012. 8 (The document referred to was marked 9 by the reporter as Exhibit 2 for identification 10 and is attached hereto) 11 BY MS. PONEK: 12 Q. Have you seen this document before? 13 A. I think I receive it by mail. 14 Q. What is this document? 15 A. I think I receive it from an attorney. I 16 don't know where it came from. 17 Q. Please turn to page 3. Is that your 18 signature at the bottom of page 3? 19 A. Yes, it is mine. 20 Q. Paragraph 12 of this document on page 3 21 states, "I never received the Citibank Client Manual 22 that Citibank refers to in its motion to compel 23 arbitration." Do you see that? 24 A. Yes. 25 Q. Are you aware that Citibank's motion to</p>
<p style="text-align: right;">46</p> <p>1 A. Yes. 2 Q. What did you do with the statements after 3 receiving them? 4 A. I put all my statements, I put in the folder 5 and I hold it I think for five years my cousin told 6 me I have to keep them. 7 Q. On page 2 of this document in the section 8 under fees and rate detail, there is a statement 9 that says: "Please refer to your Client Manual and 10 Marketplace Addendum Booklet and amendments for 11 details." Do you see that statement? 12 A. Where is it? Yes, I could see it right 13 under \$250,000. 14 Q. After receiving this statement, did you 15 ever request a copy of the client manual -- 16 A. No, I did not. 17 Q. -- from Citibank. Did you ever request a 18 copy of the Marketplace Addendum from Citibank? 19 A. No, I did not. 20 Q. Did you ever request a copy of the terms 21 and conditions governing your Citibank -- 22 A. No, I did not. 23 MR. KELLY: I'm objecting to all these 24 questions as they are in direct violation of 25 Magistrate James Cott's order and Citibank's</p>	<p style="text-align: right;">48</p> <p>1 compel arbitration incorrectly referred to a client 2 manual that was effective as of January 2010? 3 A. I never received, what is it? I don't 4 understand what it says. I don't know what is motion 5 to compel arbitration. 6 Q. Before you signed this document, did you 7 review it? 8 A. Yes, I did, yes, but it's been couple years 9 ago so it's hard for me. 10 Q. When you signed this document, did you 11 understand all of the statements that were in it? 12 A. Mostly I did. Maybe I just missed this 13 part. 14 Q. Did you ever receive the client manual 15 effective July 2010? 16 A. No. I just saying about the dates, that's 17 what I'm confused you tell me 2003 or 2010, I cannot 18 tell you something I don't recall. 19 Q. Your declaration does not refer to any 20 document that you received from Citibank when you 21 opened your account; is that correct? 22 A. Yes. 23 Q. But you did receive an account opening 24 receipt, correct? 25 A. Yes.</p>

<p style="text-align: right;">49</p> <p>1 Q. And as you've testified, you don't believe</p> <p>2 you received any other documents when you opened</p> <p>3 your account?</p> <p>4 A. Right.</p> <p>5 Q. How do you know that you didn't receive any</p> <p>6 other documents from Citibank when you opened your</p> <p>7 account?</p> <p>8 A. I don't know how to answer the question how</p> <p>9 do I know that I did not receive a document. I don't</p> <p>10 know how to answer this question.</p> <p>11 MR. KELLY: Objection.</p> <p>12 BY MS. PONEK:</p> <p>13 Q. You stated that you have monthly files that</p> <p>14 you maintain, correct?</p> <p>15 A. Most of them, yes. All important documents</p> <p>16 I hold.</p> <p>17 Q. Have you checked your monthly files to see</p> <p>18 if you have any other documents from Citibank?</p> <p>19 A. I'll check always monthly files before</p> <p>20 filing income taxes, in preparing, they then</p> <p>21 preparing income tax and give it to my accountant.</p> <p>22 Q. Did you check your files prior to signing</p> <p>23 this declaration to make sure that you didn't have</p> <p>24 any other documents from Citibank?</p> <p>25 A. I can't recall the date, but I usually check</p>	<p style="text-align: right;">51</p> <p>1 correct?</p> <p>2 A. For the year 2010, I requested my files in</p> <p>3 2011 in the tax period before.</p> <p>4 Q. Have you ever conducted a search, a review</p> <p>5 of your files specifically for this lawsuit?</p> <p>6 A. No, because I don't have many documents, I</p> <p>7 don't have any documents, and there is nothing for me</p> <p>8 to review. I only had a lot of paperwork which you</p> <p>9 sent to me from your law firm, not you personally. I</p> <p>10 spoke over the phone once. I also have paper which I</p> <p>11 file with the small claim court in City of Santa</p> <p>12 Monica.</p> <p>13 Q. Did you keep any papers relating to your</p> <p>14 Citibank accounts?</p> <p>15 A. I have a paper of my CD which I currently</p> <p>16 have. And my credit card statement.</p> <p>17 Q. Did you keep the account statements</p> <p>18 relating to Citibank accounts?</p> <p>19 A. At the time --</p> <p>20 MR. KELLY: Objection. Answer.</p> <p>21 THE WITNESS: I'm sorry, he said something</p> <p>22 do I keep statements?</p> <p>23 MS. PONEK: Could you read the question</p> <p>24 back.</p> <p>25 (Record read)</p>
<p style="text-align: right;">50</p> <p>1 my files with my documents before the tax file, which</p> <p>2 is before April 15, on usual occasion and I don't</p> <p>3 know whether was it exactly on April 10 or April 12,</p> <p>4 I cannot recall you the dates.</p> <p>5 Q. So in April 2012, would you have reviewed</p> <p>6 documents in your files from the year 2010?</p> <p>7 A. Yes, most likely, by this time I would know</p> <p>8 the year before because I never filed on the last</p> <p>9 day. I always try to file like in the middle of tax</p> <p>10 season.</p> <p>11 Q. Let me finish asking my question before you</p> <p>12 answer, okay. This declaration was signed in April</p> <p>13 2012, correct?</p> <p>14 A. April 12 actually.</p> <p>15 Q. April 2012?</p> <p>16 A. The one I have it says '12.</p> <p>17 Q. And you opened your account in 2010,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. So in 2012 when you were reviewing your</p> <p>21 files for tax purposes, would you have reviewed</p> <p>22 files for the year 2010?</p> <p>23 A. No, I reviewed files for 2011 at this time.</p> <p>24 Q. So when you signed this declaration, you</p> <p>25 did not review your files for the year 2010,</p>	<p style="text-align: right;">52</p> <p>1 THE WITNESS: At the time, of course I did.</p> <p>2 BY MS. PONEK:</p> <p>3 Q. And you kept them in the monthly folders,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. Did you keep any disclosures relating to</p> <p>7 your Citibank account?</p> <p>8 A. I would keep if I have. I don't have now.</p> <p>9 Q. So, for instance, if a disclosure came in</p> <p>10 the mail with your account statement, and this is</p> <p>11 just an example, would you keep those disclosures</p> <p>12 with your Citibank statements?</p> <p>13 A. I usually keep my account, my statement, I</p> <p>14 keep in the folder in the same envelope as it comes</p> <p>15 in, so whatever is in there, usually. I just look at</p> <p>16 it. If it's any promotion or any flyers, I usually</p> <p>17 put them there and I put it back in an envelope and</p> <p>18 keep it in a file.</p> <p>19 Q. How long do you keep those papers in the</p> <p>20 files?</p> <p>21 A. I think I have them for a long time. For</p> <p>22 long enough. I didn't trash them yet. I don't know</p> <p>23 if they have to have it like three for state or five</p> <p>24 for federal, I don't remember that. I have to call</p> <p>25 accountant to tell you because he told me that they</p>

<p style="text-align: right;">53</p> <p>1 have to keep them certain amount of time. I keep</p> <p>2 them in storage space.</p> <p>3 Q. So you would still keep documents from</p> <p>4 2010, you would still have those documents?</p> <p>5 A. I think I do have them.</p> <p>6 Q. Where do you keep those files? For</p> <p>7 instance --</p> <p>8 A. In a special space.</p> <p>9 Q. Are they in your house?</p> <p>10 A. It's close to my space, to the space I live.</p> <p>11 Q. So are they in a storage unit?</p> <p>12 A. I have a storage unit as well.</p> <p>13 Q. And is that where you keep the papers, for</p> <p>14 instance statements relating to your Citibank</p> <p>15 account?</p> <p>16 A. All my paperwork I have a box for every year</p> <p>17 for company and personal, I have like two boxes and</p> <p>18 each of them has personal information and business</p> <p>19 information, because it's separate.</p> <p>20 Q. So I'm just asking where the physical</p> <p>21 location is?</p> <p>22 A. Address?</p> <p>23 Q. Yes. Address is fine.</p> <p>24 A. It's in Beverly Hills, California.</p> <p>25 Q. And is it at an office?</p>	<p style="text-align: right;">55</p> <p>1 don't know. The person I live with, I don't know,</p> <p>2 whoever. It's not too many people.</p> <p>3 Q. So who do you live with that would have</p> <p>4 access to your files?</p> <p>5 MR. KELLY: Objection.</p> <p>6 BY MS. PONEK:</p> <p>7 Q. You can go ahead and answer.</p> <p>8 A. Do I have to tell you who do I live with? I</p> <p>9 don't want to discuss that. It's my private matter.</p> <p>10 MR. KELLY: I don't see what you're getting</p> <p>11 at here with these questions.</p> <p>12 MS. PONEK: I'm trying to figure out where</p> <p>13 he keeps his files that would be related to this</p> <p>14 case.</p> <p>15 Q. You're not going to give me the name, but</p> <p>16 anybody living with you would have access to your</p> <p>17 files; is that correct?</p> <p>18 A. Theoretically, yes. Even you, you can get</p> <p>19 my key and get access to my house. Potentially have</p> <p>20 an access to my house.</p> <p>21 Q. Are they --</p> <p>22 A. Valet parking could potentially have access</p> <p>23 to my house because I left the key with him.</p> <p>24 Q. Are they in a locked room?</p> <p>25 A. The files?</p>
<p style="text-align: right;">54</p> <p>1 A. It's a room, half of this size and I keep</p> <p>2 all my things in there.</p> <p>3 Q. Is it a storage unit?</p> <p>4 A. It's in my building, I have special space</p> <p>5 where I keep my paperwork.</p> <p>6 Q. What is the address where you keep those</p> <p>7 papers?</p> <p>8 A. Where I live, at the same address as my</p> <p>9 residence address.</p> <p>10 Q. Other than when you review your files for</p> <p>11 tax purposes, do you access those files for any</p> <p>12 other reason?</p> <p>13 A. If I look for certain type of transaction</p> <p>14 from credit card, something, but it's not usually</p> <p>15 happen for last couple of years, I have like</p> <p>16 unauthorized transaction so I have to find it, I do</p> <p>17 not receive any check my mail or something like that.</p> <p>18 Q. Does anyone else in your house have access</p> <p>19 to your files?</p> <p>20 A. Nobody go into my files.</p> <p>21 Q. Does anyone have access to the files?</p> <p>22 A. Yes.</p> <p>23 Q. Who has access?</p> <p>24 A. Hypothetically people who clean my house,</p> <p>25 but they do not have access to my storage space. I</p>	<p style="text-align: right;">56</p> <p>1 Q. Uh-huh.</p> <p>2 A. Yes, they are locked, yes.</p> <p>3 Q. Do you know if anyone in your house ever</p> <p>4 threw away any papers relating to your Citibank</p> <p>5 account?</p> <p>6 A. No, usually nobody takes my papers.</p> <p>7 THE REPORTER: Could we take a quick break?</p> <p>8 MR. KELLY: That's fine, off the record.</p> <p>9 THE VIDEOGRAPHER: Going off the record at</p> <p>10 1:13 p.m.</p> <p>11 (Brief recess)</p> <p>12 THE VIDEOGRAPHER: We're going back on the</p> <p>13 record at 1:24 p.m.</p> <p>14 MS. PONEK: I'm going to mark as</p> <p>15 defendant's Exhibit 3, Defendant Citibank's First</p> <p>16 Set of Request For Production of Documents dated</p> <p>17 December 5, 2013.</p> <p>18 (The document referred to was marked</p> <p>19 by the reporter as Exhibit 3 for identification</p> <p>20 and is attached hereto) dated December 5, 2013.</p> <p>21 BY MS. PONEK:</p> <p>22 Q. Have you seen this document before?</p> <p>23 A. Yes.</p> <p>24 Q. When did you see it?</p> <p>25 A. When I received it by mail.</p>

<p style="text-align: right;">57</p> <p>1 Q. Do you know approximately when you received 2 it by mail? 3 A. A couple of years ago, I think. 4 Q. It's dated December 5, 2013 so it would 5 have been recently if you received it? 6 A. Maybe December 5, yes. 7 Q. Did you have in the month of December at 8 some point, you received this document? 9 A. Yes, because I received so many of them, 10 mostly you are the one who sent it to me. It was 11 like ten pounds. Mr. Katz said he is going recycle, 12 price is more than he asked for in papers and copies 13 and probably the cartridge cost was more, the nature 14 of the claim. 15 Q. After December 5, 2013, did you undertake a 16 search for any documents relating to your accounts, 17 your Citibank accounts? 18 A. Was I asked to look for it? 19 Q. Yes. 20 A. Yes, I received an e-mail from my attorney 21 that they have to have whatever I have with Citibank, 22 whatever business relationship do I have with them, I 23 have documents and, as of now, I have a CD as I 24 mentioned, which was 5-year CD, which I opened also 25 only about the same time, so it's mature date going</p>	<p style="text-align: right;">59</p> <p>1 Q. If you can turn to page 4, please. Under 2 request for production No. 1, it says: "All 3 documents relating to the accounts," and let me just 4 clarify. The accounts is defined as any account 5 opened by you with Citibank, including but not 6 limited to the accounts -- basically your checking 7 and savings account that you opened in 2010. 8 A. Yes, so what is your question? 9 Q. So in December 2013, since December 5, 10 2013, have you done a search for all of the 11 documents relating to your Citibank account? 12 A. I did not have time for it besides the CD. 13 Q. No. 4 states: "All requests for 14 production, all contracts or agreements relating to 15 the accounts, including any amendment or changes to 16 such contracts or agreements." Do you see that? 17 A. Yes, I could see it, No. 4. 18 Q. And again, you didn't -- 19 A. I don't have any. I don't have any contract 20 because I haven't reached any. 21 Q. But you did say you receive monthly 22 statements -- 23 A. Monthly statement, yes, yes. 24 Q. And that you stored those monthly 25 statements and any documents that were sent with the</p>
<p style="text-align: right;">58</p> <p>1 to be five years in October, I think end of the year, 2 October, maybe September. 3 Q. I'm sorry, I wasn't very clear. I'm just 4 asking if you looked for any documents relating to 5 your checking and savings account that you opened at 6 Citibank in 2010? 7 A. There is nothing, documents, I wasn't asked 8 for look for the statements you just show me similar 9 to this one. 10 Q. Did you look back at your monthly files to 11 see if you had the account opening -- 12 A. Not for 2010. I didn't look for files for 13 2010. 14 Q. So you haven't looked for any documents 15 dated in 2010 relating to the Citibank accounts that 16 you opened? 17 A. No, I did not look for it as of now. I look 18 only for statement I have. I looked for Citibank and 19 know I have this only current account which I have a 20 CD, there is nothing else. I have credit card, I 21 think. 22 Q. Did you look for any documents relating to 23 your checking and savings accounts that you opened 24 in 2010? 25 A. For 2010, no.</p>	<p style="text-align: right;">60</p> <p>1 monthly statements in your files, correct? 2 A. Yes, but in my understanding in contract, 3 just my understanding of laws, it's statement is not 4 a contract to an agreement. 5 MR. KELLY: For the record, Citibank also 6 has all these statements in their own possession. 7 MS. PONEK: We can discuss that afterwards. 8 I don't think it's necessary to discuss it in the 9 deposition. 10 I don't have any further questions. We are 11 going to enter into the same stipulation. The 12 original transcript will be sent to our offices -- 13 I'm sorry, will be sent to you, and you will send it 14 to Mr. Romanov for his review and signature. He'll 15 return it within 30 days, and we also waive your 16 obligation to keep the original transcript. 17 THE REPORTER: Do you stipulate to what she 18 said? 19 MR. KELLY: Yes. 20 THE VIDEOGRAPHER: We're off the record at 21 1:30 p.m. and this concludes the testimony given by 22 Igor Romanov. The total number of media used was 23 one and will be retained by Veritext, LLC. 24 (The deposition was concluded at 1:30 p.m.) 25</p>

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CASE NAME: Hirsch, Bertram Et Al v. Citibank, NA
DATE OF DEPOSITION: 1/9/2014
WITNESSES' NAME:

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THIS _____ DAY OF _____, 20__.

(NOTARY PUBLIC) MY COMMISSION EXPIRES:

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Unsigned

I further certify that I am neither counsel for, nor related to, any party to said action, nor in anywise interested in the outcome thereof.

GINA M. CLOUD
CSR No. 6315

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<p>1</p> <p>2 UNITED STATES DISTRICT COURT</p> <p>3 SOUTHERN DISTRICT OF NEW YORK</p> <p>4 -----X</p> <p>5 BERTRAM HIRSCH and IGOR</p> <p>6 ROMANOV, on behalf of themselves and</p> <p>7 all others similarly situated,</p> <p>8 Plaintiff,</p> <p>9 vs. Case No. 12 Civ. 1124 (DAB)</p> <p>10 CITIBANK, N.A.,</p> <p>11</p> <p>12 Defendant.</p> <p>13 -----X</p> <p>14</p> <p>15 December 19, 2013</p> <p>16 9:25 a.m.</p> <p>17</p> <p>18 Deposition of the Defendant Citibank,</p> <p>19 N.A., VIVIAN SAFIR, held at the offices of</p> <p>20 Veritext Legal Solutions, 1250 Broadway,</p> <p>21 New York, New York, pursuant to Notice,</p> <p>22 before NANCY SORENSEN, a Notary Public of</p> <p>23 the State of New York.</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED,</p> <p>3 by and between the attorneys for the respective</p> <p>4 parties herein, that filing and sealing be and</p> <p>5 the same are hereby waived.</p> <p>6 IT IS FURTHER STIPULATED AND AGREED</p> <p>7 that all objections, except as to the form</p> <p>8 of the question, shall be reserved to the</p> <p>9 time of the trial.</p> <p>10 IT IS FURTHER STIPULATED AND AGREED</p> <p>11 that the within deposition may be sworn to</p> <p>12 and signed before any officer authorized to</p> <p>13 administer an oath, with the same force and</p> <p>14 effect as if signed and sworn to before the</p> <p>15 Court.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4 SCHOENGOLD & SPORN, P.C.</p> <p>5 Attorneys for Plaintiffs</p> <p>6 World Wide Plaza</p> <p>7 393 West 49th Street, Suite 5HH</p> <p>8 New York, New York 10019</p> <p>9 BY: SAMUEL P. SPORN, ESQ.</p> <p>10 - AND -</p> <p>11 THE LAW OFFICE OF JAMES C. KELLY</p> <p>12 244 5h Avenue, Suite K-278</p> <p>13 New York, New York 10001</p> <p>14</p> <p>15</p> <p>16 STROOCK & STROOCK & LAVAN LLP</p> <p>17 Attorneys for Defendant</p> <p>18 180 Maiden Lane</p> <p>19 New York, New York 10038-4982</p> <p>20 BY: JOSEPH E. STRAUSS, ESQ.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 VIVIAN SAFIR, called as a</p> <p>3 witness, having been duly sworn by a Notary</p> <p>4 Public, was examined and testified as follows:</p> <p>5 EXAMINATION BY</p> <p>6 MR. KELLY:</p> <p>7 Q. Hi, my name is James Kelly. I'm</p> <p>8 counsel for the plaintiffs against Citibank in</p> <p>9 this action that we've called you in for today.</p> <p>10 A. Okay.</p> <p>11 Q. I'm here with Mr. Sam Sporn, my</p> <p>12 co-counsel in the case. And we're here to take</p> <p>13 your deposition.</p> <p>14 And, you know, we'll go, maybe we'll</p> <p>15 go about 45, 50 minutes or so and then take a</p> <p>16 break, maybe 10 minutes or so.</p> <p>17 And, you know, along the way, if you</p> <p>18 have a need for a break, you just tell me.</p> <p>19 And so I am ready to begin.</p> <p>20 Can you just state your name and</p> <p>21 address for the record?</p> <p>22 A. My home address?</p> <p>23 Q. Yes.</p> <p>24 A. Vivian Safir, 26 Prospect Street,</p> <p>25 Great Neck, New York 11021.</p>

<p>5</p> <p>1 V. Safir</p> <p>2 Q. That's Vivian Safir?</p> <p>3 A. Yes.</p> <p>4 Q. Ms. Safir, can you just tell us when</p> <p>5 did you start working at Citibank?</p> <p>6 A. Oh, 1985, November 19, 1985.</p> <p>7 Q. Can you just state for the record</p> <p>8 your date of birth?</p> <p>9 A. [REDACTED]</p> <p>10 Q. Can you talk a little bit about your</p> <p>11 education beginning with high school?</p> <p>12 A. Okay.</p> <p>13 Q. What studies, you know, where did you</p> <p>14 go to school?</p> <p>15 A. Not here, outside the country.</p> <p>16 Q. What country?</p> <p>17 A. I'm from Iraq, Baghdad. I finish</p> <p>18 college there, business. And the same year I</p> <p>19 finished, we just run away, fled the country.</p> <p>20 Q. When did you come here?</p> <p>21 A. 1975, Bicentennial.</p> <p>22 Q. So you did your understudies in Iraq,</p> <p>23 business you said that was?</p> <p>24 A. Business administration.</p> <p>25 Q. Business degree, college degree?</p>	<p>7</p> <p>1 V. Safir</p> <p>2 A. I don't remember.</p> <p>3 Q. This was back in 1975. And then how</p> <p>4 long were you there for?</p> <p>5 A. Maybe five years. And then I moved</p> <p>6 to Great Neck. I worked in a bank in Great</p> <p>7 Neck.</p> <p>8 Q. So you moved to a bank in Great Neck?</p> <p>9 A. Yes.</p> <p>10 Q. What bank was that?</p> <p>11 A. I think at that time it use to be</p> <p>12 East New York Savings Bank.</p> <p>13 Q. What did you do there?</p> <p>14 A. I was a teller.</p> <p>15 Q. What did that entail, a teller, just</p> <p>16 depositing money and --</p> <p>17 A. Yeah, taking care of clients. Just</p> <p>18 behind a window, cash, deposits, withdrawals,</p> <p>19 doing selling travel checks, cashier's checks,</p> <p>20 foreign currency, whatever.</p> <p>21 Q. What about opening up new accounts</p> <p>22 and going through that process?</p> <p>23 A. No, no, just the teller.</p> <p>24 Q. That's at East New York Savings, just</p> <p>25 a teller. How long were you there?</p>
<p>6</p> <p>1 V. Safir</p> <p>2 A. Yes, B.A.</p> <p>3 Q. B.A.? Any other colleges besides</p> <p>4 Iraq?</p> <p>5 A. No.</p> <p>6 Q. What was the name of the school?</p> <p>7 A. Al Hikma University. It's like an</p> <p>8 American university. It's everything in</p> <p>9 English.</p> <p>10 Q. Did you have any professional</p> <p>11 degrees?</p> <p>12 A. Like?</p> <p>13 Q. Business advanced degrees or master's</p> <p>14 program?</p> <p>15 A. No, no.</p> <p>16 Q. CFA license or CPA license?</p> <p>17 A. No.</p> <p>18 Q. Nothing like that. What about -- so</p> <p>19 you came here in 1975. What did you do for</p> <p>20 work?</p> <p>21 A. Oh, I think I worked down Wall Street</p> <p>22 in a bank.</p> <p>23 Q. What did you do there?</p> <p>24 A. I think insurance and claims.</p> <p>25 Q. What was the name of that bank?</p>	<p>8</p> <p>1 V. Safir</p> <p>2 A. I think nine years.</p> <p>3 Q. Nine years. So that, so you left</p> <p>4 there about --</p> <p>5 A. 19 --</p> <p>6 Q. -- 85, I guess?</p> <p>7 A. -- 80 -- no.</p> <p>8 Q. Is that when you started at Citibank?</p> <p>9 A. 1980 -- I was pregnant when I left,</p> <p>10 1981, just before I had my baby.</p> <p>11 Q. So you took a few years off?</p> <p>12 A. And then I took four years off.</p> <p>13 Q. And then started at Citibank?</p> <p>14 A. Yes.</p> <p>15 Q. When you started at Citibank, what</p> <p>16 was your position at the time?</p> <p>17 A. A teller.</p> <p>18 Q. What were your duties there as a</p> <p>19 teller, the same as --</p> <p>20 A. The same, yes.</p> <p>21 Q. -- as East New York Savings, same</p> <p>22 duties?</p> <p>23 A. Um-hmm.</p> <p>24 Q. How long were you a teller for?</p> <p>25 A. I think 10 years.</p>

<p style="text-align: right;">9</p> <p>1 V. Safir</p> <p>2 Q. Ten years?</p> <p>3 A. Yes.</p> <p>4 Q. So what was the position after the</p> <p>5 teller position?</p> <p>6 A. Service officer.</p> <p>7 Q. Service officer. So you started that</p> <p>8 in about 1995?</p> <p>9 A. Yes.</p> <p>10 Q. What duties did that entail?</p> <p>11 A. Well, taking care of clients. I'm at</p> <p>12 the desk. They come, they want to order checks,</p> <p>13 they want to make a stop payment. They want to</p> <p>14 order statements.</p> <p>15 They want to see a person at the</p> <p>16 desk. They want to open account, direct them</p> <p>17 where they have to go.</p> <p>18 Q. So it's like a customer service</p> <p>19 position?</p> <p>20 A. It is customer service, yes.</p> <p>21 Q. You did no account openings?</p> <p>22 A. No.</p> <p>23 Q. Who would do the account openings?</p> <p>24 A. The bankers.</p> <p>25 Q. Bankers. What position after the</p>	<p style="text-align: right;">11</p> <p>1 V. Safir</p> <p>2 branch?</p> <p>3 A. One manager, yes.</p> <p>4 Q. That's the Great Neck branch?</p> <p>5 A. Um-hmm.</p> <p>6 Q. Is that the branch that you've always</p> <p>7 been at --</p> <p>8 A. No.</p> <p>9 Q. -- since Citibank?</p> <p>10 A. No, I started in Bayside, Bell</p> <p>11 Boulevard.</p> <p>12 Q. How long were you there?</p> <p>13 A. That's just 10 years.</p> <p>14 Q. That's 10 years now. So that was as</p> <p>15 a teller?</p> <p>16 A. Um-hmm.</p> <p>17 Q. Then you --</p> <p>18 A. It's about 9 or 10 years, I think.</p> <p>19 Q. -- moved to --</p> <p>20 A. I moved to Great Neck.</p> <p>21 Q. -- as a service officer, you started</p> <p>22 there?</p> <p>23 A. Yes.</p> <p>24 Q. Are you currently still working for</p> <p>25 Citibank?</p>
<p style="text-align: right;">10</p> <p>1 V. Safir</p> <p>2 service officer?</p> <p>3 A. I became a personal banker.</p> <p>4 Q. When did you start that position?</p> <p>5 A. I think '99.</p> <p>6 Q. '99?</p> <p>7 A. '99 or 2000, I'm not sure.</p> <p>8 Q. What duties did that entail as a</p> <p>9 personal banker?</p> <p>10 A. Doing everything.</p> <p>11 Q. Like what? Can you explain some of</p> <p>12 the main duties?</p> <p>13 A. All right, open accounts, service</p> <p>14 clients, order checks, make stop payments, order</p> <p>15 statements, fix client problems.</p> <p>16 Q. Is that your current position now,</p> <p>17 personal banker?</p> <p>18 A. I'm still in the same position, yes.</p> <p>19 Q. Did you have supervisors? How did</p> <p>20 the structure work in terms of who you reported</p> <p>21 to?</p> <p>22 A. Manager.</p> <p>23 Q. The manager?</p> <p>24 A. Um-hmm.</p> <p>25 Q. Was there one manager for your</p>	<p style="text-align: right;">12</p> <p>1 V. Safir</p> <p>2 A. Um-hmm.</p> <p>3 Q. What kind of training did you receive</p> <p>4 from Citibank in terms of as a -- did you have</p> <p>5 any training as a service officer, do you</p> <p>6 recall, at Great Neck?</p> <p>7 A. No.</p> <p>8 Q. No? How did you learn what to do as</p> <p>9 a service officer?</p> <p>10 A. Interacting with clients, and when I</p> <p>11 was a teller, I asked all kinds of questions.</p> <p>12 All the time I wanted to learn.</p> <p>13 Q. So you asked your manager?</p> <p>14 A. Or supervisor. Teller has their own</p> <p>15 supervisor.</p> <p>16 Q. Supervisor.</p> <p>17 Is that the same when you moved over</p> <p>18 to personal banker, was there like training</p> <p>19 sessions or anything like that?</p> <p>20 A. I wasn't trained.</p> <p>21 Q. It's the same thing --</p> <p>22 A. At that time, I wasn't trained. Now,</p> <p>23 there is training.</p> <p>24 Q. When did the training begin? When</p> <p>25 did the -- now you say, now there's training?</p>

<p>13</p> <p>1 V. Safir</p> <p>2 A. People who decide to become a</p> <p>3 personal banker, they send them for training.</p> <p>4 Q. I see.</p> <p>5 A. I wasn't trained.</p> <p>6 Q. I see.</p> <p>7 A. I just learned on my own.</p> <p>8 Q. Do you know when that started, that</p> <p>9 people started having to go to training if they</p> <p>10 become a personal banker?</p> <p>11 A. No, I don't know what year it</p> <p>12 started.</p> <p>13 Q. To your knowledge?</p> <p>14 A. Maybe I started '99 -- 2000</p> <p>15 something. I don't know. I don't remember. I</p> <p>16 don't know.</p> <p>17 Q. Do you know what it entails by</p> <p>18 talking to the other new personal bankers, what</p> <p>19 the training entails or it was just something</p> <p>20 you'd know?</p> <p>21 MR. STRAUSS: Objection to the form</p> <p>22 of the question.</p> <p>23 A. Well, I don't know what they, you</p> <p>24 know -- no, I don't know.</p> <p>25 Q. You don't know what the training</p>	<p>15</p> <p>1 V. Safir</p> <p>2 of the question. Compound question, vague.</p> <p>3 Q. What kind of accounts do you open up</p> <p>4 for customers?</p> <p>5 A. Checking, savings, if they need</p> <p>6 credit card. And, you know, I don't do</p> <p>7 mortgage.</p> <p>8 Q. Is there another personal banker in</p> <p>9 that branch that concentrates on mortgages?</p> <p>10 A. No.</p> <p>11 Q. Does the branch do any mortgages?</p> <p>12 A. Yes, they do. There's a special</p> <p>13 person that does mortgages only.</p> <p>14 Q. What's that title?</p> <p>15 A. It's -- they call it home lending</p> <p>16 specialist.</p> <p>17 Q. Have you opened up accounts as a</p> <p>18 result of somebody coming in with a promotional</p> <p>19 offer, such as open up this account and you will</p> <p>20 receive a bonus or --</p> <p>21 A. Yes.</p> <p>22 Q. When you sign up for a customer, when</p> <p>23 you open up an account for a customer, do you</p> <p>24 disclose Citibank's policies?</p> <p>25 MR. STRAUSS: Objection.</p>
<p>14</p> <p>1 V. Safir</p> <p>2 entails?</p> <p>3 A. No.</p> <p>4 Q. Nobody's ever talked to you about</p> <p>5 that before?</p> <p>6 A. No. They just finish training, they</p> <p>7 come and they start working.</p> <p>8 Q. Do you know how long it takes, the</p> <p>9 training?</p> <p>10 A. It's, it depends what they, you know,</p> <p>11 could -- I don't know.</p> <p>12 Q. Is it in-house or do they have to go</p> <p>13 somewhere?</p> <p>14 A. No, they have to come to the City.</p> <p>15 Q. Is that the Citibank headquarters?</p> <p>16 A. Yeah.</p> <p>17 Q. Is that midtown?</p> <p>18 A. I think Court Square.</p> <p>19 Q. Long Island City?</p> <p>20 A. Yeah.</p> <p>21 Q. So as a personal banker, was there</p> <p>22 ever a time you actually signed up clients for</p> <p>23 either a checking, a savings or a promotional</p> <p>24 offer or mortgage lending relationship?</p> <p>25 MR. STRAUSS: Objection to the form</p>	<p>16</p> <p>1 V. Safir</p> <p>2 A. Yes.</p> <p>3 Q. What are some of the things you</p> <p>4 disclose?</p> <p>5 MR. SPORN: Off the record.</p> <p>6 (Discussion off the record.)</p> <p>7 MR. SPORN: So what's the last</p> <p>8 question?</p> <p>9 (The record was read.)</p> <p>10 MR. STRAUSS: Objection.</p> <p>11 Q. Is that, you do -- you stated you do</p> <p>12 disclose Citibank's policies to the customer;</p> <p>13 correct?</p> <p>14 A. Yeah.</p> <p>15 Q. So what are some of the policies that</p> <p>16 you disclose to them?</p> <p>17 A. Well, we have a, you know, terms and</p> <p>18 conditions, we have a client manual and client</p> <p>19 addendum.</p> <p>20 Q. So you discuss with them the terms</p> <p>21 and conditions contained in those documents?</p> <p>22 A. Whatever pertain to what I'm opening.</p> <p>23 Q. What are some of the -- so depending</p> <p>24 on if it's a checking account or if it's a</p> <p>25 savings account, you discuss different things?</p>

<p>17</p> <p>1 V. Safir</p> <p>2 A. Yes.</p> <p>3 Q. Let's talk about a checking account.</p> <p>4 What are some of the things you would</p> <p>5 disclose and discuss?</p> <p>6 A. Well, it's the, whatever package they</p> <p>7 picking up, we started talk about it, you know,</p> <p>8 we have different packages.</p> <p>9 Q. What are some of the packages?</p> <p>10 A. Well, there's Citigold, there's</p> <p>11 Citibank, there are Basics.</p> <p>12 Q. Each of these have different</p> <p>13 disclosure materials that you must provide?</p> <p>14 A. Well, the disclosure is for all the</p> <p>15 accounts. But each package has different -- I</p> <p>16 don't know how to say it. It's, it's like each</p> <p>17 package has different, like different fees,</p> <p>18 different account, writing checks, different --</p> <p>19 how do you say, different fee waivers. You</p> <p>20 know, all kind of whatever is pertained to each</p> <p>21 package.</p> <p>22 Q. So you go with them, the different</p> <p>23 charges?</p> <p>24 A. Different pricing on each.</p> <p>25 Q. On overdrafts?</p>	<p>19</p> <p>1 V. Safir</p> <p>2 checking, savings accounts, whether it's</p> <p>3 Citigold, Citibank, Basic, besides the prices</p> <p>4 that they would talk to you about and ask you</p> <p>5 questions, did you discuss any other obligations</p> <p>6 that the customer had to Citibank in opening up</p> <p>7 that -- any of these accounts?</p> <p>8 MR. STRAUSS: Objection, form.</p> <p>9 A. I don't know what you mean.</p> <p>10 Q. Did you discuss with them any terms</p> <p>11 and conditions or any agreements with the</p> <p>12 customer?</p> <p>13 MR. STRAUSS: Objection, vague.</p> <p>14 Do you understand the question?</p> <p>15 THE WITNESS: No.</p> <p>16 MR. STRAUSS: Try to rephrase it.</p> <p>17 Q. When the customer opens up an</p> <p>18 account, do you, do you disclose to them any</p> <p>19 terms and agreements, do you orally to them?</p> <p>20 MR. STRAUSS: Object again.</p> <p>21 A. I don't understand what --</p> <p>22 Q. Let's go through a process.</p> <p>23 What happens when a customer opens an</p> <p>24 account, can you give me an example of the steps</p> <p>25 that are taken?</p>
<p>18</p> <p>1 V. Safir</p> <p>2 A. Yes.</p> <p>3 Q. Or stop payments, different pricing?</p> <p>4 A. Everything, whatever, you know,</p> <p>5 how -- of course, whatever the client ask.</p> <p>6 Q. So if they ask how much does this</p> <p>7 cost, then you --</p> <p>8 A. Yes.</p> <p>9 Q. But there's no, there's no set</p> <p>10 statements that you make to every customer, it</p> <p>11 depends on what they ask; correct?</p> <p>12 MR. STRAUSS: Objection.</p> <p>13 MR. KELLY: Did you get her answer?</p> <p>14 MR. SPORN: Would you repeat the</p> <p>15 question?</p> <p>16 (The record was read.)</p> <p>17 A. I don't understand.</p> <p>18 Q. There's no prewritten policy or</p> <p>19 statement that you make to each customer, such</p> <p>20 as the overdraft fee is this, the stop check is</p> <p>21 this, they have to ask first, and then you will</p> <p>22 tell them?</p> <p>23 MR. STRAUSS: Objection.</p> <p>24 A. Yes.</p> <p>25 Q. When clients open up a Citibank</p>	<p>20</p> <p>1 V. Safir</p> <p>2 A. Like what steps?</p> <p>3 Q. Each step that is taken when a</p> <p>4 customer opens up an account?</p> <p>5 A. Okay. Well, when they come, they ask</p> <p>6 and we explain what packages we have. And then</p> <p>7 I explain to them that each package, what fees,</p> <p>8 what balances they have to keep if they -- what</p> <p>9 -- if they have, if they need an overdraft, if</p> <p>10 they use an overdraft, if they get accepted,</p> <p>11 what's the fees on that.</p> <p>12 You know, all, explain everything to</p> <p>13 the client. And once they decide what package,</p> <p>14 then we start opening the account.</p> <p>15 And at the end when we're done, we</p> <p>16 give them the papers, and we hand the manuals,</p> <p>17 the client manual and the addendum, and tell</p> <p>18 them everything they need is within there, and</p> <p>19 that's about it.</p> <p>20 Q. So you discuss the prices, and when</p> <p>21 they're done, is that when they sign the</p> <p>22 signature card?</p> <p>23 A. Yes.</p> <p>24 Q. So after they're done, they sign the</p> <p>25 signature card --</p>

<p style="text-align: right;">21</p> <p>1 V. Safir</p> <p>2 A. They sign signature card, we give</p> <p>3 them the, what do you call it, the statement</p> <p>4 that comes out from the system, from the</p> <p>5 computer. They get that.</p> <p>6 Do the deposit, give them receipts.</p> <p>7 Explain to them how they go, you know, how the</p> <p>8 product like going on-line, paying their bills,</p> <p>9 you know, whatever is involved in that kind of</p> <p>10 opening.</p> <p>11 Q. The client manual, is that together</p> <p>12 with the other documents that you hand them all</p> <p>13 together --</p> <p>14 A. Yes.</p> <p>15 Q. -- and tell them this is the</p> <p>16 documents related to your account?</p> <p>17 A. Yes, we hand them the client manual</p> <p>18 and the addendum that has the terms and</p> <p>19 conditions of whatever the client need to know</p> <p>20 about fees, accounts, what's involved, all that.</p> <p>21 Q. Do you discuss any of the things that</p> <p>22 are contained in the documents or you just let</p> <p>23 them know --</p> <p>24 A. Well --</p> <p>25 Q. -- this is yours?</p>	<p style="text-align: right;">23</p> <p>1 V. Safir</p> <p>2 Q. Does the client manual, is that a,</p> <p>3 like a booklet?</p> <p>4 A. Yes.</p> <p>5 Q. Is it a pamphlet?</p> <p>6 A. I don't know what's the difference,</p> <p>7 pamphlet, booklet.</p> <p>8 Q. For instance, is there a staple on it</p> <p>9 or is it bound nicely and --</p> <p>10 A. It's folded.</p> <p>11 Q. It's folded?</p> <p>12 A. With staples in the middle. It's</p> <p>13 like a booklet.</p> <p>14 Q. Like a booklet?</p> <p>15 A. Yes.</p> <p>16 Q. Where do the client manuals come</p> <p>17 from?</p> <p>18 MR. STRAUSS: Objection to the form</p> <p>19 of the question.</p> <p>20 A. How do I know. We get them in the</p> <p>21 branch.</p> <p>22 Q. You don't know where the branch gets</p> <p>23 them from?</p> <p>24 A. No, I don't order them.</p> <p>25 Q. Was there ever a time that somebody</p>
<p style="text-align: right;">22</p> <p>1 V. Safir</p> <p>2 A. -- I let them know and if they ask, I</p> <p>3 discuss it with them.</p> <p>4 MR. STRAUSS: Let him finish his</p> <p>5 question before you start answer. Don't</p> <p>6 speak over each other.</p> <p>7 Q. Does anybody ever ask any questions</p> <p>8 with respect to the documents, the client manual</p> <p>9 or any other documents you give them?</p> <p>10 A. No.</p> <p>11 Q. No. Is the client manual, is that</p> <p>12 some kind of welcome package, is that a term you</p> <p>13 recall, a welcome package?</p> <p>14 A. No, that's a policy to give every</p> <p>15 client.</p> <p>16 Q. It's a policy?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know of a package called a</p> <p>19 Welcome Package? Have you ever heard that term</p> <p>20 A. Yes.</p> <p>21 Q. What is that, do you know?</p> <p>22 A. Well, it's a package we prepare</p> <p>23 ourself. We put in the client manual, the</p> <p>24 addendum, any other flyers that pertain to the</p> <p>25 client opening an account.</p>	<p style="text-align: right;">24</p> <p>1 V. Safir</p> <p>2 opened an account and there were no client</p> <p>3 manuals available to give to a customer?</p> <p>4 A. No, we do have. Every employee has</p> <p>5 it. They order it. If we run out, we tell them</p> <p>6 to order it.</p> <p>7 Q. Was there ever a time that you had --</p> <p>8 there was none available, and the customer</p> <p>9 opened an account and you could not give them</p> <p>10 the client manual and all the documents that you</p> <p>11 typically do give a customer?</p> <p>12 A. No.</p> <p>13 Q. No.</p> <p>14 Did you ever discuss with the clients</p> <p>15 promotional offers, whether they would get a</p> <p>16 1099, a Form 1099 that the bonus provided was</p> <p>17 taxable, did you ever discuss that?</p> <p>18 MR. STRAUSS: Objection.</p> <p>19 A. No.</p> <p>20 Q. No?</p> <p>21 MR. SPORN: The answer is no?</p> <p>22 Q. Did anybody ever ask you if I sign up</p> <p>23 for this offer from Citibank, I receive,</p> <p>24 whatever the offer is, airline miles, a bonus of</p> <p>25 money to put in their account, did anybody ask</p>

25

1 V. Safir
 2 you, ever ask you if that would be taxable for
 3 receipt of that bonus or airline miles?
 4 MR. STRAUSS: Objection.
 5 A. What's the question?
 6 MR. SPORN: You better read it again.
 7 MR. KELLY: Can you read the
 8 question.
 9 (The record was read.)
 10 A. No.
 11 Q. Was there any formal sales program,
 12 document or manual provided to you by Citibank
 13 to follow the instructions when you open up an
 14 account?
 15 A. Say it again?
 16 Q. Was there any formal documents or
 17 sales manual or sales Q & A internal for you to
 18 instruct you how to open an account?
 19 MR. STRAUSS: Objection to the form
 20 of the question.
 21 Q. Steps to take to open an account?
 22 A. No.
 23 Q. You don't recall anything like that?
 24 A. No.
 25 Q. So mostly you just learned from

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1 V. Safir
 2 talking to your supervisor and manager, the
 3 steps to take in opening an account?
 4 A. Yeah, I just watched somebody opening
 5 an account and just started myself.
 6 MR. STRAUSS: James, can we take like
 7 a 5-minute break.
 8 MR. KELLY: Sure.
 9 (Brief recess taken.)
 10 FURTHER EXAMINATION
 11 BY MR. KELLY:
 12 MR. KELLY: Can you read back the
 13 last question.
 14 (The record was read.)
 15 Q. When did you start opening accounts?
 16 A. When I became a personal banker.
 17 MR. SPORN: And the year on that, if
 18 you don't mind? What year?
 19 Q. What year?
 20 A. I think 1999 or 2000. One of them.
 21 MR. STRAUSS: You said '99 or 2000
 22 previously.
 23 Q. Can you name some of your supervisors
 24 while you were at Citibank as a personal banker?
 25 A. Who was the first one. Donna

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1 V. Safir
 2 Marisco.
 3 MR. SPORN: How do you spell that?
 4 THE WITNESS: M-A-R-S-I-C-O, last
 5 name.
 6 A. Second one, Christine Sweeney. I
 7 think there was one in between. I don't
 8 remember. And George Lotto. That's my boss
 9 now.
 10 Q. Can you spell his last name?
 11 A. George, G-E-O-R-G-E, L-O-T-T-O.
 12 Q. That's your supervisor?
 13 A. Manager.
 14 Q. Manager is the term?
 15 A. Yes.
 16 Q. Is this also the branch manager?
 17 A. Yes.
 18 Q. So there's one branch manager at all
 19 times?
 20 A. Yes.
 21 Q. That's your supervisor?
 22 A. Yes.
 23 Q. Did you ever open up any of the
 24 promotional airline mile offers from Citibank
 25 that are the subject of this complaint against

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1 V. Safir
 2 Citibank?
 3 MR. STRAUSS: Objection, form.
 4 Q. One of them was if you open up a
 5 savings account and put in 25,000 airline miles,
 6 you would get -- no, \$25,000 -- strike --
 7 \$25,000 --
 8 MR. KELLY: Strike the question,
 9 please.
 10 Q. Did you ever open up one of Citibank
 11 Airline Miles promotional offers for a customer
 12 in which they would get 20,000 airline miles if
 13 they deposited \$25,000 in a savings account?
 14 Do you ever recall that promotional
 15 offer?
 16 MR. STRAUSS: Objection, vague.
 17 A. No.
 18 MR. SPORN: No?
 19 THE WITNESS: I don't remember.
 20 Q. Do you recall --
 21 A. There's always, you know, so many
 22 promotions.
 23 Q. Do you recall a checking account
 24 offer where if you opened up a checking account
 25 and use your debit card a certain amount of

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1 V. Safir
2 times, that you would get 20,000 airline miles?
3 MR. STRAUSS: Objection.
4 A. Say it again?
5 Q. Did you ever open up an account for a
6 customer who came to a Citibank branch with a
7 Citibank offer stating that if you open up a
8 checking account and do certain things, such as
9 use your debit card three times or such, that
10 you would get 20,000 airline miles as a bonus?
11 A. Yes.
12 Q. You recall those ones.
13 What are some of the other airline
14 mile promotional offers that you can recall?
15 MR. STRAUSS: Objection.
16 A. I don't know.
17 Q. You don't know the specifics of the
18 airline mile offers?
19 A. No.
20 Q. But you just know that there have
21 been many different airline mile offers;
22 correct?
23 MR. STRAUSS: Objection.
24 THE WITNESS: I don't know what he is
25 asking me.

30

1 V. Safir
2 A. I don't know.
3 Q. When somebody comes to you with one
4 of these airline mile offers, and you've opened
5 an account for them, have they ever asked you if
6 the airline miles are taxable?
7 A. No.
8 Q. They've never asked you?
9 A. No.
10 Q. There was no discussion about the tax
11 consequences of receiving airline miles?
12 A. No.
13 Q. Do you remember talking with the
14 plaintiff in this lawsuit Bertram Hirsch?
15 A. I don't remember.
16 Q. Did you ever have a gentleman come in
17 to you and ask you why did they receive a 1099,
18 and this occurred about January 2012?
19 MR. STRAUSS: Objection.
20 A. I don't know. I don't remember.
21 Q. You don't recall a gentleman named
22 Bertram Hirsch coming to you and showing you a
23 1099, and asking you why did I receive this 1099
24 from Citibank and discussing that with you?
25 MR. STRAUSS: Objection. Asked and

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1 V. Safir
2 answered.
3 A. I don't remember.
4 MR. SPORN: Let's take a 10-minute
5 break.
6 (Brief recess taken.)
7 FURTHER EXAMINATION
8 BY MR. KELLY:
9 MR. KELLY: I want to put in as
10 Plaintiff's Exhibit 1, a document Bates
11 numbered Citi 0000117, which is addressed to
12 Bertram E. Hirsch, which is a Form
13 1099-MISC.
14 (Plaintiff's Exhibit 1, a Form
15 1099-MISC, Bates numbered Citi 0000117,
16 marked for identification, as of this
17 date.)
18 Q. Do you recall ever seeing a document
19 that looks like this?
20 MR. STRAUSS: Objection to the form
21 of the question.
22 A. What is this?
23 Q. Do you know what that is?
24 A. No.
25 Q. You don't know?

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1 V. Safir
2 A. It says here, "1099."
3 Q. Do you know what a 1099 form is?
4 A. It's like your salary, what you make.
5 Q. Has anybody ever showed you a 1099
6 form, any of the customers at Citibank, and
7 asked you why did I receive this?
8 A. No.
9 MR. KELLY: I'd like to offer into
10 evidence Plaintiff's Exhibit 2, Bates
11 numbered Citi-0000133 titled, "National Form
12 Center Citibank."
13 (Plaintiff's Exhibit 2, a National
14 Form Center Citibank Bates numbered
15 Citi-0000133, marked for identification, as
16 of this date.)
17 Q. Can you just take a look at this
18 document, read through it, and see if you
19 recognize it?
20 A. (The witness complies with request.)
21 This is how you open an account.
22 Q. Have you seen these instructions
23 before or this document?
24 A. This, you can print it from the
25 system, from the computer. But I never needed

<p style="text-align: right;">33</p> <p>1 V. Safir</p> <p>2 to print it because I've been opening account.</p> <p>3 MR. KELLY: This document runs from</p> <p>4 Bates number Citi-0000133 to Citi-0000139,</p> <p>5 Citibank National Form Center, just for the</p> <p>6 record.</p> <p>7 And so --</p> <p>8 MR. STRAUSS: That's not a question?</p> <p>9 MR. KELLY: No, it's not.</p> <p>10 Q. So you never go to the, to, to this,</p> <p>11 to this computer, this like a computer screen,</p> <p>12 computer-generated instruction?</p> <p>13 A. It's a form on the computer. Yeah,</p> <p>14 we do go, if I need any other form, anything</p> <p>15 that I need to look at, yes.</p> <p>16 Q. So sometimes you'll go to look at</p> <p>17 this to see what steps --</p> <p>18 A. It depends on what I'm looking for,</p> <p>19 yes.</p> <p>20 Q. -- you need to take?</p> <p>21 What are some of the things that you</p> <p>22 had to go to look for?</p> <p>23 MR. STRAUSS: Objection.</p> <p>24 A. What?</p> <p>25 Q. What are some of the things that you</p>	<p style="text-align: right;">35</p> <p>1 V. Safir</p> <p>2 Q. What if there were changes in the</p> <p>3 steps that you had to take to open an account,</p> <p>4 how would they inform you?</p> <p>5 MR. STRAUSS: Objection.</p> <p>6 Q. How did Citibank inform you?</p> <p>7 MR. STRAUSS: Do you understand the</p> <p>8 question?</p> <p>9 THE WITNESS: No.</p> <p>10 MR. STRAUSS: Maybe you could read it</p> <p>11 back.</p> <p>12 He clarified something after I</p> <p>13 objected, so maybe you want to rephrase that</p> <p>14 question.</p> <p>15 Q. Were there any changes to the steps</p> <p>16 that you have to take to open an account at any</p> <p>17 time while you --</p> <p>18 A. Not really. Just system upgrades.</p> <p>19 All the time there are system upgrades, computer</p> <p>20 upgrades.</p> <p>21 MR. KELLY: I want to introduce as</p> <p>22 Plaintiff's Exhibit number 3, Bates number</p> <p>23 Citi-0000119 through Citi-0000132 titled,</p> <p>24 "Personal Banker Foundations Participant</p> <p>25 Guide North America Consumer."</p>
<p style="text-align: right;">34</p> <p>1 V. Safir</p> <p>2 had to go to look for?</p> <p>3 A. E-Forms, look for Citi business, if I</p> <p>4 need some forms that I had to print.</p> <p>5 Q. Did you ever go to where it states</p> <p>6 Citi-0000135, third page -- yes, that's it,</p> <p>7 where it says, "Consumer account opening stage</p> <p>8 one introduction," did you have to go there to</p> <p>9 see what steps should be taken?</p> <p>10 A. No. Because I've been opening</p> <p>11 accounts to so many years.</p> <p>12 Q. What about the next page where it</p> <p>13 says, "Customer account opening stage 2, open</p> <p>14 account," same thing, you didn't have to go to</p> <p>15 this either?</p> <p>16 MR. STRAUSS: Object to this</p> <p>17 question, as well.</p> <p>18 A. What is the question?</p> <p>19 (The record was read.)</p> <p>20 A. It's just steps to how you go on the</p> <p>21 computer, step by step and open account. They</p> <p>22 give you, you write --</p> <p>23 Q. You didn't have to go to this</p> <p>24 document?</p> <p>25 A. No.</p>	<p style="text-align: right;">36</p> <p>1 V. Safir</p> <p>2 (Plaintiff's Exhibit 3, Personal</p> <p>3 Banker Foundations Participant Guide North</p> <p>4 America Consumer Bates number Citi-0000119</p> <p>5 through Citi-0000132, marked for</p> <p>6 identification, as of this date.)</p> <p>7 MR. STRAUSS: Is there a question?</p> <p>8 Q. Can you just take a look through the</p> <p>9 document to see if you recognize it?</p> <p>10 A. (The witness complies with request.)</p> <p>11 Yes.</p> <p>12 Q. Do you remember seeing this document?</p> <p>13 Do you recognize it?</p> <p>14 A. Not really the document, but I know</p> <p>15 the, what's going on with the steps.</p> <p>16 Q. But you've never seen this particular</p> <p>17 document?</p> <p>18 A. No, this is for the new hires.</p> <p>19 Q. This is what gets, the new hire, that</p> <p>20 training program is?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know when that started, this</p> <p>23 document?</p> <p>24 A. No.</p> <p>25 Q. When they started giving it to them;</p>

<p style="text-align: right;">37</p> <p>1 V. Safir</p> <p>2 no?</p> <p>3 A. No, I don't.</p> <p>4 Q. If you could go to the second page,</p> <p>5 Citi-0000120, it states the original printing of</p> <p>6 this document was 1/2006.</p> <p>7 MR. STRAUSS: This is where he's</p> <p>8 looking, right here.</p> <p>9 Q. Do you know that if this document --</p> <p>10 that's when this document began being used by</p> <p>11 personal bankers?</p> <p>12 MR. STRAUSS: Objection.</p> <p>13 A. I don't know.</p> <p>14 Q. You see right under that it says,</p> <p>15 "Revised March 4, 2013"?</p> <p>16 So it seems this is some kind of</p> <p>17 revision to the process, opening of account</p> <p>18 process?</p> <p>19 MR. STRAUSS: Objection. Is there a</p> <p>20 question? Is that a question or is that a</p> <p>21 statement?</p> <p>22 MR. KELLY: A statement.</p> <p>23 MR. STRAUSS: Is there a question</p> <p>24 pending?</p> <p>25 Q. Do you recall any revisions around</p>	<p style="text-align: right;">39</p> <p>1 V. Safir</p> <p>2 A. It's really for the banker. It's not</p> <p>3 for the client.</p> <p>4 Q. Do you or do you not check off any of</p> <p>5 these boxes?</p> <p>6 A. I do.</p> <p>7 Q. You do.</p> <p>8 What do you do when you check off</p> <p>9 each box, do you keep it in the client records,</p> <p>10 is that the internal Citibank records, this</p> <p>11 document?</p> <p>12 A. No, we don't keep papers.</p> <p>13 Q. What happens to the --</p> <p>14 A. It's just for me to work, call client</p> <p>15 afterwards, welcome, thanks for banking with us.</p> <p>16 What can I do for you --</p> <p>17 Q. So this document --</p> <p>18 A. -- that's just for --</p> <p>19 MR. STRAUSS: Let her finish.</p> <p>20 A. -- banker.</p> <p>21 Q. So this is on a computer screen, is</p> <p>22 that it, this document?</p> <p>23 A. Yeah, that speaks from the computer.</p> <p>24 Q. So it doesn't get printed out?</p> <p>25 A. No, that's with the account opening.</p>
<p style="text-align: right;">38</p> <p>1 V. Safir</p> <p>2 March 13 to the opening of a sales -- of opening</p> <p>3 of a Citi account --</p> <p>4 MR. STRAUSS: Objection.</p> <p>5 Q. -- to the process taken, the steps</p> <p>6 taken?</p> <p>7 A. No.</p> <p>8 Q. Do you recall any revisions or</p> <p>9 changes to the steps to be taken in opening up a</p> <p>10 Citi account at all?</p> <p>11 MR. STRAUSS: Objection, asked and</p> <p>12 answered.</p> <p>13 A. It's the same question. No.</p> <p>14 Q. The previous question was during</p> <p>15 March 13. The second question was at any time,</p> <p>16 meaning any year?</p> <p>17 A. (Witness nods.) No.</p> <p>18 Q. In this document, if you could turn</p> <p>19 to Citi-0000123, do you recognize that customer</p> <p>20 care checklist there?</p> <p>21 A. Yeah, that comes out of the computer</p> <p>22 when we open accounts.</p> <p>23 Q. Do you have to check off each box for</p> <p>24 each step that you take with opening up the</p> <p>25 account?</p>	<p style="text-align: right;">40</p> <p>1 V. Safir</p> <p>2 The end when we transmit, that comes out with</p> <p>3 the signature card.</p> <p>4 Q. So it gets printed out?</p> <p>5 A. Yeah.</p> <p>6 Q. And do you make the checks after it's</p> <p>7 printed out that you did each step or while it's</p> <p>8 on the computer screen?</p> <p>9 You know, do you actually check these</p> <p>10 boxes or put --</p> <p>11 A. Which boxes?</p> <p>12 Q. The little indications of each step.</p> <p>13 A. No, that's for me to check what I did</p> <p>14 during the account opening.</p> <p>15 Q. But do you actually physically place</p> <p>16 a check or is there an X on the computer screen</p> <p>17 to indicate that you've taken each step here?</p> <p>18 A. No, this is for us, for me to see</p> <p>19 what I did, what I have to do in two weeks or</p> <p>20 the next few days to call the client to follow</p> <p>21 up with the client. I don't understand your</p> <p>22 question.</p> <p>23 Q. For instance, it says here, "Client</p> <p>24 manual and marketplace addendum, explained and</p> <p>25 given to client."</p>

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1 V. Safir
2 How do you know that you did that?
3 Do you actually put a check I did that step or
4 do you not?
5 A. No, I don't put a check, but I give
6 it to the client, yes.
7 Q. When did this customer care checklist
8 start that process, do you recall?
9 MR. STRAUSS: Objection.
10 A. No. No, I don't.
11 Q. About, it's been going on for many
12 years now or --
13 A. I don't know. I can't remember.
14 Q. What about a year ago, do you
15 remember doing checklists about a year ago?
16 A. Yes.
17 Q. Two years?
18 A. Maybe.
19 Q. Every client has one of these
20 checklists?
21 MR. STRAUSS: Objection.
22 Q. A new client that opens an account
23 has a checklist associated with that account; is
24 that correct?
25 MR. STRAUSS: Objection to the form

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1 V. Safir
2 of the question.
3 A. Everything you do, that comes out.
4 Whether it's checking or saving or whatever.
5 Any time you open any account, this pops up.
6 Q. It pops up on the screen?
7 A. Not the screen, the end of the
8 transactions. At the end of finishing account
9 opening, it comes from the printer.
10 Q. It prints out?
11 A. Prints out.
12 Q. Do you go through the list to make
13 sure that you've done everything, that
14 everything is correct on here?
15 A. Yeah, I could do it that minute or
16 later, it didn't have to be the same, you know.
17 Q. So this occurs --
18 A. This is just for me. That checklist
19 is for me.
20 RQ MR. KELLY: Joe, I don't recall
21 seeing these checklists for Bertram Hirsch
22 or Igor Romanov in the documents provided.
23 Can we -- plaintiffs request the
24 production of these, if they're available.
25 MR. STRAUSS: If we have them in our

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1 V. Safir
2 records, I will have to get back to you on
3 that.
4 I believe Ms. Safir testified that
5 they do not keep paper, they just keep this.
6 So just as to your request, I don't
7 know if it's in our records, but I'll
8 certainly check with my client and find out.
9 THE WITNESS: We're not allowed to
10 keep any information, client's information.
11 Q. So when this is printed out, what
12 happens to it?
13 A. Just within two weeks, then we have
14 it shredded. We can't keep.
15 Q. Why can't you keep it?
16 A. It's client information. They have
17 the names, they have address, they have -- it's
18 audit requirement.
19 MR. SPORN: Just off the record.
20 (Discussion off the record.)
21 Q. The printout is destroyed, but this
22 information is still in the system; correct?
23 A. Yeah.
24 Q. So it's accessible still, to go back
25 into the system, print it out?

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1 V. Safir
2 A. What information are you talking
3 about?
4 Q. The customer care checklist we just
5 talked about.
6 A. No, it's not in the system. It's
7 client name and address, phone, whatever, that's
8 in the system. Not this page.
9 Q. You can't access the customer
10 checklist after it's printed out?
11 A. No. You can the same day, but not
12 afterward. A few days, it's not in there.
13 Q. So this is printed out, and you go
14 through here to make sure that all these steps
15 were followed.
16 How do you indicate whether each step
17 is followed, is it something you just --
18 A. I write my own notes.
19 Q. So you write a little note of what --
20 A. Everyone does.
21 Q. In the disclosure section at the
22 bottom, is there anything that you disclosed
23 when you talk to the customers about
24 arbitration?
25 MR. STRAUSS: What was that question?

<p style="text-align: right;">45</p> <p>1 V. Safir</p> <p>2 Can you read that back.</p> <p>3 (The record was read.)</p> <p>4 MR. STRAUSS: Objection to the form</p> <p>5 of the question.</p> <p>6 Q. Do you know what arbitration is?</p> <p>7 A. No.</p> <p>8 Q. Do you know what arbitration is?</p> <p>9 A. No.</p> <p>10 Q. You've never heard that term before?</p> <p>11 A. I did, but I don't know what it is.</p> <p>12 MR. STRAUSS: That's what we should</p> <p>13 be doing, James.</p> <p>14 MR. KELLY: I want to introduce as</p> <p>15 Plaintiff's Exhibit 4, Citi-000079 through</p> <p>16 Citi-000080.</p> <p>17 The document's titled, "Concierge</p> <p>18 Daily Transaction/Transmittal Report."</p> <p>19 (Plaintiff's Exhibit 4, a Concierge</p> <p>20 Daily Transaction/Transmittal Report Bates</p> <p>21 numbered Citi-000079 through Citi-000080,</p> <p>22 marked for identification, as of this</p> <p>23 date.)</p> <p>24 Q. Do you recognize this document? Do</p> <p>25 you recognize this document?</p>	<p style="text-align: right;">47</p> <p>1 V. Safir</p> <p>2 Q. If you can go back to this?</p> <p>3 MR. SPORN: Sorry, do you have an</p> <p>4 answer to that? You have an objection, but</p> <p>5 did you answer it?</p> <p>6 THE WITNESS: No, I don't understand</p> <p>7 what he's saying.</p> <p>8 MR. KELLY: Okay, I'll provide a</p> <p>9 foundation.</p> <p>10 Q. If you go back to the personal banker</p> <p>11 foundation document, that's Citi-000130?</p> <p>12 MR. STRAUSS: 130?</p> <p>13 MR. KELLY: Yes.</p> <p>14 Q. Up on the right-hand top of the third</p> <p>15 box on the top, it states to the right, "Review</p> <p>16 customer care checklist and set expectations for</p> <p>17 future follow-up call, slide transition will</p> <p>18 display customer care checklist."</p> <p>19 Then it says, "Present welcome kit."</p> <p>20 A. Okay.</p> <p>21 Q. Are you aware what the welcome kit</p> <p>22 is?</p> <p>23 A. Yeah.</p> <p>24 Q. What is the welcome kit?</p> <p>25 A. Well, that's -- I told you. We</p>
<p style="text-align: right;">46</p> <p>1 V. Safir</p> <p>2 MR. STRAUSS: Objection to the form</p> <p>3 of the question.</p> <p>4 Are you talking about this specific</p> <p>5 document?</p> <p>6 Q. Let's go to Citi, the second page</p> <p>7 Citi-000080.</p> <p>8 Do you recognize this document?</p> <p>9 A. It's a signature card.</p> <p>10 Q. Is this what all the customers sign</p> <p>11 when they open up an account?</p> <p>12 A. Yes.</p> <p>13 Q. So I think you stated earlier that</p> <p>14 the customer signs the card, signature card when</p> <p>15 they open up an account, you explain to them</p> <p>16 some overdraft fees, whatever questions they</p> <p>17 have with respect to the particular account.</p> <p>18 Then the computer prints out the</p> <p>19 package of documents and you put it in a welcome</p> <p>20 package, is that what it's called?</p> <p>21 MR. STRAUSS: Can you read that back.</p> <p>22 I missed the first part.</p> <p>23 (The record was read.)</p> <p>24 MR. STRAUSS: Objection to the form</p> <p>25 of the question.</p>	<p style="text-align: right;">48</p> <p>1 V. Safir</p> <p>2 prepare the welcome kit. We put the manual, the</p> <p>3 addendum, any flyers that pertain to the account</p> <p>4 opening in the welcome kit.</p> <p>5 And then whatever comes out, the</p> <p>6 paper, we give the client with the account</p> <p>7 opening, like this comes out with the name and</p> <p>8 account number and all that, everything, put it</p> <p>9 in the welcome kit.</p> <p>10 Q. That is after they sign the signature</p> <p>11 card?</p> <p>12 A. It's after we're done with</p> <p>13 everything.</p> <p>14 Q. After everything is done.</p> <p>15 So the signature card is signed, then</p> <p>16 the welcome kit at the end?</p> <p>17 A. Yeah.</p> <p>18 Q. Do you actually take the documents</p> <p>19 out of the welcome kit and show them each</p> <p>20 document?</p> <p>21 A. Yeah, tell them whatever is in the</p> <p>22 kit itself. You know, whatever I put in the</p> <p>23 flyers, the -- I tell them each one, what it is.</p> <p>24 Q. Do you open it up and discuss it with</p> <p>25 them or you just let them know these documents</p>

<p style="text-align: right;">49</p> <p>1 V. Safir</p> <p>2 are in here?</p> <p>3 A. Well, I show it to them, and if they</p> <p>4 have any questions, I'll discuss with them.</p> <p>5 Q. What do you show --</p> <p>6 MR. KELLY: Actually, strike that.</p> <p>7 Let's introduce as Plaintiff's Exhibit 5,</p> <p>8 Bates number Citi-0000001 through</p> <p>9 Citi-0000028 titled, "Client Manual Consumer</p> <p>10 Accounts Including Our Privacy Notice, U.S.</p> <p>11 Markets Effective January 1st, 2010."</p> <p>12 (Plaintiff's Exhibit 5, Client Manual</p> <p>13 Consumer Accounts Including Our Privacy</p> <p>14 Notice, U.S. Markets Effective January 1st,</p> <p>15 2010 Bates numbered Citi-0000001 through</p> <p>16 Citi-0000028, marked for identification, as</p> <p>17 of this date.)</p> <p>18 Q. Do you recognize this document?</p> <p>19 A. Yeah, that's the client manual, but</p> <p>20 it doesn't come like that.</p> <p>21 Q. In the pamphlet form, it comes?</p> <p>22 A. (Witness indicates.)</p> <p>23 MR. STRAUSS: Pamphlet folder.</p> <p>24 Q. Now you actually take out the client</p> <p>25 manual and you open it up and go through it with</p>	<p style="text-align: right;">51</p> <p>1 V. Safir</p> <p>2 MR. STRAUSS: Objection, form.</p> <p>3 Q. Only if they ask; correct? If you</p> <p>4 could turn to the second page, Citi-000000 --</p> <p>5 MR. STRAUSS: Wait, did she answer</p> <p>6 the last question?</p> <p>7 What was the last question?</p> <p>8 (The record was read.)</p> <p>9 Q. So only if they ask?</p> <p>10 A. Yes, I will -- then we'll read it</p> <p>11 together.</p> <p>12 Q. If you could turn to the second, the</p> <p>13 page actually Citi-0000002. Actually, I'm</p> <p>14 sorry, it's Citi-0000003.</p> <p>15 That's the third page there where it</p> <p>16 says, "Resolution of Disputes By Arbitration."</p> <p>17 Do you ever talk to them about that,</p> <p>18 go through --</p> <p>19 A. I don't.</p> <p>20 Q. If you could go to page Citi-0000023?</p> <p>21 MR. STRAUSS: I'll object to that</p> <p>22 last question. Sorry for being a little</p> <p>23 slow to process.</p> <p>24 Q. It says up there, "Resolution of</p> <p>25 Disputes By Arbitration."</p>
<p style="text-align: right;">50</p> <p>1 V. Safir</p> <p>2 them or you just --</p> <p>3 A. No, I don't go through it. There's a</p> <p>4 lot of things in there. It's, the client has to</p> <p>5 read it. But if they've any questions, I'll</p> <p>6 explain to them.</p> <p>7 Q. So this comes out at the end after</p> <p>8 they open the account?</p> <p>9 A. Yes, we give them with the --</p> <p>10 Q. Do people usually look through it?</p> <p>11 A. Not all of them, no, they take it</p> <p>12 home.</p> <p>13 Q. Did they usually have any questions</p> <p>14 about anything in it?</p> <p>15 A. Not really.</p> <p>16 Q. If you could turn to the second page</p> <p>17 of the client manual Citi-0000002, it states,</p> <p>18 "Account opening ownership maintenance closing"</p> <p>19 you see that highlighted section right there at</p> <p>20 the top?</p> <p>21 A. Yes.</p> <p>22 Q. So you don't go into the manual and</p> <p>23 discuss any of that with them?</p> <p>24 MR. STRAUSS: Objection.</p> <p>25 Q. You don't do that; correct?</p>	<p style="text-align: right;">52</p> <p>1 V. Safir</p> <p>2 Do you recall ever going through this</p> <p>3 with anybody, whether you did it on your own or</p> <p>4 if somebody asked specific questions about this</p> <p>5 section?</p> <p>6 A. Never.</p> <p>7 Q. Do you know that arbitration is a</p> <p>8 procedure where the parties --</p> <p>9 MR. KELLY: Well, strike that.</p> <p>10 Q. Do you know that this clause provides</p> <p>11 that Citibank could require customers to go to</p> <p>12 binding arbitration and waive their right to a</p> <p>13 jury trial?</p> <p>14 MR. STRAUSS: Objection. James, the</p> <p>15 clause says what it says.</p> <p>16 MR. SPORN: Well, he's asking a</p> <p>17 question. She can answer that question.</p> <p>18 A. I don't know.</p> <p>19 MR. STRAUSS: I don't know if she can</p> <p>20 or not.</p> <p>21 MR. SPORN: Okay, she answered.</p> <p>22 Q. Do you think that if there was a</p> <p>23 provision that required a customer to waive</p> <p>24 their right to a jury trial in the court system,</p> <p>25 do you think that would be important for them to</p>

<p>53</p> <p>1 V. Safir</p> <p>2 know?</p> <p>3 MR. STRAUSS: Objection.</p> <p>4 A. I don't know.</p> <p>5 Q. Do you know anything about this</p> <p>6 particular sentence which states that, that</p> <p>7 states that it provides that either you, the</p> <p>8 customer or we, Citibank, can require that any</p> <p>9 disputes be resolved by binding arbitration?</p> <p>10 The next sentence, "Arbitration</p> <p>11 replaces the right to go to court, including the</p> <p>12 right to participate in a class action or</p> <p>13 similar proceeding," do you know anything about</p> <p>14 that?</p> <p>15 MR. STRAUSS: Objection.</p> <p>16 A. No.</p> <p>17 MR. STRAUSS: James, she's not an</p> <p>18 attorney. She's not here to testify as to</p> <p>19 arbitration.</p> <p>20 She's not here to comment on</p> <p>21 arbitration as a way to resolve disputes.</p> <p>22 So can you please move on. It's a</p> <p>23 complete waste of time.</p> <p>24 Q. Has Citibank ever provided you with</p> <p>25 any training or arbitraiton?</p>	<p>55</p> <p>1 V. Safir</p> <p>2 A. Yeah, but that's the regular</p> <p>3 signature card.</p> <p>4 Q. Well, there's a copy of this</p> <p>5 signature card inside the client manual, as you</p> <p>6 can see here.</p> <p>7 You see that here?</p> <p>8 A. I see it.</p> <p>9 Q. Is the customer required to sign that</p> <p>10 one inside the client manual, this one here on</p> <p>11 page 47?</p> <p>12 A. No.</p> <p>13 Q. No?</p> <p>14 A. No.</p> <p>15 Q. Do you know why this is contained in</p> <p>16 here, this signature card?</p> <p>17 A. I don't know why, but I don't think</p> <p>18 there's any signature in the client manual.</p> <p>19 Q. Is a signature card a separate</p> <p>20 document?</p> <p>21 A. This is signature card signed by the</p> <p>22 customer at account opening when you open the</p> <p>23 account. I haven't -- I never seen this.</p> <p>24 Q. Could you look at the top where it</p> <p>25 says, "No class action or joint or parties," it</p>
<p>54</p> <p>1 V. Safir</p> <p>2 MR. SPORN: Sorry. You have your</p> <p>3 objection.</p> <p>4 MR. STRAUSS: It's there, you betcha.</p> <p>5 Q. Has Citibank ever provided any</p> <p>6 training on how to discuss arbitration to a</p> <p>7 customer when they open an account?</p> <p>8 A. No.</p> <p>9 Q. Were there any documents or manuals</p> <p>10 or sales procedures provided to Citibank</p> <p>11 requiring you to notify the customer that they</p> <p>12 were agreeing to an arbitration provision by</p> <p>13 signing this client manual?</p> <p>14 A. No.</p> <p>15 Q. If you could go to the next page</p> <p>16 Citibank-00000024, you see the signature card on</p> <p>17 the side there?</p> <p>18 Are the customers required to sign</p> <p>19 this signature card contained in the client</p> <p>20 manual?</p> <p>21 A. There's no signature card for a</p> <p>22 client manual. This is the regular signature</p> <p>23 card for account opening.</p> <p>24 Q. This is the client manual we're</p> <p>25 looking at and it appears --</p>	<p>56</p> <p>1 V. Safir</p> <p>2 states, "You and we agree that no class action,</p> <p>3 private Attorney General or other representative</p> <p>4 of claims may be pursued in arbitration, nor may</p> <p>5 such action be pursued in court if either you or</p> <p>6 we elect arbitration."</p> <p>7 Do you remember ever talking to any</p> <p>8 customers about this particular clause?</p> <p>9 A. No.</p> <p>10 Q. Do you remember ever getting any</p> <p>11 sales procedures or sales steps to take, to</p> <p>12 inform or notify a customer of that particular</p> <p>13 clause?</p> <p>14 A. No.</p> <p>15 MR. SPORN: Let's take a 5, 10-minute</p> <p>16 break.</p> <p>17 (Brief recess taken.)</p> <p>18 MR. SPORN: What's the last question?</p> <p>19 (The record was read.)</p> <p>20 MR. KELLY: I want to introduce as</p> <p>21 Plaintiff's Exhibit 6, a Citibank-0000081</p> <p>22 through Citibank-0000101, which it's a</p> <p>23 collection of different screen printouts it</p> <p>24 looks like.</p> <p>25 The first page is at the top states</p>

<p style="text-align: right;">57</p> <p>1 V. Safir</p> <p>2 "Insured Market Rate Summary."</p> <p>3 (Plaintiff's Exhibit 6, a collection</p> <p>4 of different screen printouts Bates numbered</p> <p>5 Citibank-0000081 through Citibank-0000101,</p> <p>6 marked for identification, as of this</p> <p>7 date.)</p> <p>8 Q. If you could turn TO page</p> <p>9 Citibank-0000086? Can you explain what this is,</p> <p>10 if you know?</p> <p>11 MR. STRAUSS: Objection.</p> <p>12 A. What is this?</p> <p>13 Q. You don't know?</p> <p>14 A. No. It's like a printout.</p> <p>15 Investigation?</p> <p>16 Q. Does that look familiar to you, these</p> <p>17 comments here?</p> <p>18 MR. STRAUSS: Objection.</p> <p>19 A. This is like somebody's writing a</p> <p>20 comment.</p> <p>21 Q. You don't recall writing that?</p> <p>22 A. Hmm?</p> <p>23 Q. Do you recall writing that comment?</p> <p>24 A. Me?</p> <p>25 Q. Yes.</p>	<p style="text-align: right;">59</p> <p>1 V. Safir</p> <p>2 permissible for discovery, pursuant to the</p> <p>3 court's November 25th order.</p> <p>4 I've been very, very lenient thus far</p> <p>5 with these types of questions.</p> <p>6 I suggest you go very quickly here</p> <p>7 and get through this.</p> <p>8 MR. KELLY: If you look at the</p> <p>9 mandate, one of the issues are --</p> <p>10 MR. STRAUSS: James, I'm not going to</p> <p>11 argue with you.</p> <p>12 MR. KELLY: -- estoppel --</p> <p>13 MR. STRAUSS: James, James, James.</p> <p>14 MR. KELLY: -- and the expectations</p> <p>15 whether they benefitted from opening this</p> <p>16 account, goes right to this very issue.</p> <p>17 MR. STRAUSS: James, you're wrong.</p> <p>18 Go very quickly here; okay?</p> <p>19 She's not here to testify as to the</p> <p>20 American Airlines Miles; okay? So let's go</p> <p>21 very quickly here.</p> <p>22 MR. KELLY: The estoppel argument --</p> <p>23 MR. STRAUSS: James, I'm not getting</p> <p>24 into it with you about estoppel.</p> <p>25 MR. KELLY: -- related to whether</p>
<p style="text-align: right;">58</p> <p>1 V. Safir</p> <p>2 A. No.</p> <p>3 Q. Has Citibank ever informed you</p> <p>4 whether or not miles that customers receive from</p> <p>5 these promotional airline mile offers are</p> <p>6 taxable or not?</p> <p>7 MR. STRAUSS: Objection.</p> <p>8 A. What? Sorry.</p> <p>9 MR. KELLY: Can you read back the</p> <p>10 question.</p> <p>11 (The record was read.)</p> <p>12 A. I think it's on the promotion flyer,</p> <p>13 there's a, a clause of the, you know, where is</p> <p>14 the terms and conditions at the bottom, it says</p> <p>15 tax consequences, and that's, the client has to</p> <p>16 read that.</p> <p>17 Q. Do you know whether or not American</p> <p>18 Airline Miles that's are provided to customers</p> <p>19 by Citibank, in connection with the Airline Mile</p> <p>20 offer for opening up a bank account or savings</p> <p>21 account, do you know if those airline miles are</p> <p>22 taxable?</p> <p>23 MR. STRAUSS: Objection to the form</p> <p>24 of the question.</p> <p>25 James, this is way beyond the scope</p>	<p style="text-align: right;">60</p> <p>1 V. Safir</p> <p>2 they benefitted from the account or not?</p> <p>3 MR. STRAUSS: Move on, move on, move</p> <p>4 on now.</p> <p>5 MR. KELLY: That's your argument.</p> <p>6 MR. STRAUSS: Move on right now.</p> <p>7 MR. KELLY: Are you saying you're not</p> <p>8 going to make that argument?</p> <p>9 MR. STRAUSS: Do you have a question</p> <p>10 for -- am I being deposed? Do you have a</p> <p>11 question for this witness right now or are</p> <p>12 we done?</p> <p>13 MR. KELLY: Are you saying we can't</p> <p>14 ask questions related to the estoppel</p> <p>15 argument?</p> <p>16 MR. STRAUSS: I don't know if this is</p> <p>17 related to the estoppel argument or not. I</p> <p>18 don't know what you're doing here.</p> <p>19 I suggest you ask her your questions</p> <p>20 so we can get out of here. You're wasting</p> <p>21 time.</p> <p>22 MR. KELLY: I disagree, but --</p> <p>23 MR. STRAUSS: Move on. Let's go.</p> <p>24 Q. Do you know whether or not airline</p> <p>25 miles issued to customers, as a result of</p>

<p style="text-align: right;">61</p> <p>1 V. Safir</p> <p>2 Citibank Airline Mile offers, are taxable or</p> <p>3 not?</p> <p>4 MR. STRAUSS: Objection. She can't</p> <p>5 possibly be expected to answer that.</p> <p>6 She's not an attorney. She's not a</p> <p>7 tax attorney. She's not here to testify as</p> <p>8 to the taxability of airline miles.</p> <p>9 Q. You don't know?</p> <p>10 A. (Witness nods.)</p> <p>11 Q. If a customer went to open up an</p> <p>12 account, came to you with a promotional airline</p> <p>13 offer and said are these airline miles, are they</p> <p>14 taxable if I receive them for opening up this</p> <p>15 account --</p> <p>16 A. If they ask me, I'll tell them read</p> <p>17 the terms and conditions.</p> <p>18 Q. So you would -- you don't know?</p> <p>19 MR. STRAUSS: Objection.</p> <p>20 A. What do you mean "you don't know?"</p> <p>21 Q. Do you know whether the airline miles</p> <p>22 are taxable or not?</p> <p>23 MR. STRAUSS: Objection.</p> <p>24 A. I don't know.</p> <p>25 Q. You don't know, okay.</p>	<p style="text-align: right;">63</p> <p>1 V. Safir</p> <p>2 manual. It's written there.</p> <p>3 Q. It's written on the front page of the</p> <p>4 client --</p> <p>5 A. On the front page.</p> <p>6 Q. -- what are the terms and conditions</p> <p>7 in here?</p> <p>8 A. It says the client manual and says</p> <p>9 it's between the customer and the bank.</p> <p>10 Q. Was it always the policy of Citibank</p> <p>11 to provide the client manual to a customer?</p> <p>12 MR. STRAUSS: Objection. Put a time</p> <p>13 period on that or --</p> <p>14 Q. Do you recall when Citibank started</p> <p>15 requiring the client manual to be provided to</p> <p>16 customers?</p> <p>17 A. Well, as far as I know, you know,</p> <p>18 every time we open an account, we have to give</p> <p>19 them a client manual.</p> <p>20 Q. If a customer opens an account and</p> <p>21 they're not happy for whatever reason, can they</p> <p>22 cancel that account immediately thereafter</p> <p>23 without any charge?</p> <p>24 A. You mean to close the account?</p> <p>25 Q. Yes. Can they rescind the</p>
<p style="text-align: right;">62</p> <p>1 V. Safir</p> <p>2 MR. STRAUSS: There's your answer;</p> <p>3 okay?</p> <p>4 Q. Okay, I think we're done with this</p> <p>5 document. I just have a few cleanup questions</p> <p>6 here.</p> <p>7 When you put together the welcome kit</p> <p>8 containing the client manual and the other</p> <p>9 documents, you informed the customer of each</p> <p>10 document contained therein?</p> <p>11 A. Yes.</p> <p>12 Q. But you don't go through the document</p> <p>13 with the customer --</p> <p>14 MR. STRAUSS: Objection.</p> <p>15 Q. -- unless they ask or do you tell</p> <p>16 them the title of the document?</p> <p>17 A. Yeah, I show them what documents is</p> <p>18 in there. They should read it.</p> <p>19 Q. Do you specifically tell them that</p> <p>20 the client manual is in there?</p> <p>21 A. Yes.</p> <p>22 Q. Do you tell them that the client</p> <p>23 manual contains terms and conditions that are</p> <p>24 between Citibank and them as the customer?</p> <p>25 A. Yeah, it's written on the client</p>	<p style="text-align: right;">64</p> <p>1 V. Safir</p> <p>2 transaction and close the account?</p> <p>3 MR. STRAUSS: Objection. Objection</p> <p>4 to form.</p> <p>5 Q. Are there any penalties?</p> <p>6 A. No. There's no penalties for closing</p> <p>7 account.</p> <p>8 Q. Do you agree that if Citibank</p> <p>9 disclosed they will report IRS Airline Miles --</p> <p>10 MR. KELLY strike that.</p> <p>11 Q. Do you agree that if Citibank</p> <p>12 disclosed to a customer that airline miles that</p> <p>13 they receive, in connection with opening an</p> <p>14 account, would be taxable, if the customer would</p> <p>15 still agree to the offer?</p> <p>16 MR. STRAUSS: Objection.</p> <p>17 A. I didn't understand the question.</p> <p>18 Q. If you were to open up an account</p> <p>19 where you would receive American Airline miles</p> <p>20 for opening the account, but they were taxable,</p> <p>21 would you still open up the account?</p> <p>22 MR. STRAUSS: Objection to the form</p> <p>23 of the question. Are you asking her</p> <p>24 personal opinion?</p> <p>25 MR. KELLY: Yes, why not.</p>

<p style="text-align: right;">65</p> <p>1 V. Safir</p> <p>2 A. Yes, I would.</p> <p>3 Q. You would?</p> <p>4 A. Yeah. It's like this promotions,</p> <p>5 everyone wants a promotion; no?</p> <p>6 Q. Do you know what the term CFA means?</p> <p>7 A. Client financial analyst.</p> <p>8 Q. Client financial analyst.</p> <p>9 A. This is what the name of the personal</p> <p>10 banker used to be.</p> <p>11 Q. Do you know if the same practices for</p> <p>12 opening up customer accounts were the same</p> <p>13 across the country at all Citibank branches?</p> <p>14 MR. STRAUSS: Objection, vague.</p> <p>15 A. Supposed to be.</p> <p>16 MR. KELLY: I'm going to introduce</p> <p>17 Plaintiff's Exhibit -- introduce as</p> <p>18 Plaintiff's Exhibit 7 and 8, start with 7</p> <p>19 first, is a titled, "NY CLSC Const, Art 1,</p> <p>20 Section 2," which is the Constitution of the</p> <p>21 State of New York, Section 2, Trial By Jury</p> <p>22 Hail Waived.</p> <p>23 MR. SPORN: Is there a number on</p> <p>24 that?</p> <p>25 MR. KELLY: That's 7.</p>	<p style="text-align: right;">67</p> <p>1 V. Safir</p> <p>2 states here Seventh Amendment, this is the</p> <p>3 Seventh Amendment of the U.S. Constitution.</p> <p>4 It states, "In suits at common law</p> <p>5 where the value and controversy shall exceed \$20</p> <p>6 of right of trial by jury shall be preserved."</p> <p>7 MR. STRAUSS: Same objection.</p> <p>8 Q. Are you aware of that provision of</p> <p>9 the constitution?</p> <p>10 MR. STRAUSS: Objection.</p> <p>11 MR. SPORN: You may answer.</p> <p>12 THE WITNESS: I'm just reading it.</p> <p>13 Q. Are you aware of that provision in</p> <p>14 the Constitution, U.S. Constitution?</p> <p>15 A. Never seen it.</p> <p>16 Q. What about the New York State</p> <p>17 Constitution, are you aware of that?</p> <p>18 MR. STRAUSS: Objection.</p> <p>19 A. No.</p> <p>20 Q. Just a couple more things here.</p> <p>21 Do you know a Michael Ashley?</p> <p>22 A. Yes.</p> <p>23 Q. Michael Ashley, who is he?</p> <p>24 A. He used to be a personal banker.</p> <p>25 Q. Do you know where he is now?</p>
<p style="text-align: right;">66</p> <p>1 V. Safir</p> <p>2 (Plaintiff's Exhibit 7, the</p> <p>3 Constitution of the State of New York,</p> <p>4 Section 2, Trial By Jury Hail Waived,</p> <p>5 marked for identification, as of this</p> <p>6 date.)</p> <p>7 MR. KELLY: Then Plaintiff's Exhibit</p> <p>8 8 is titled, "Civil Trials Seventh</p> <p>9 Amendment," which is the Seventh Amendment</p> <p>10 of the U.S. Constitution.</p> <p>11 (Plaintiff's Exhibit 8, the Seventh</p> <p>12 Amendment of the U.S. Constitution, marked</p> <p>13 for identification, as of this date.)</p> <p>14 Q. Are you aware that the Constitution</p> <p>15 of the State of New York, Section 2 states,</p> <p>16 "Trial by jury in all cases" -- and I'm going to</p> <p>17 jump ahead.</p> <p>18 It has, "Heretofore been guaranteed</p> <p>19 by Constitutional provision shall remain in</p> <p>20 violate forever."</p> <p>21 Do you see that there?</p> <p>22 MR. STRAUSS: Objection. It says</p> <p>23 what it says, James.</p> <p>24 Q. If you could turn to the next page,</p> <p>25 Exhibit 8, Plaintiff's Exhibit 8, you see this</p>	<p style="text-align: right;">68</p> <p>1 V. Safir</p> <p>2 A. No.</p> <p>3 Q. You don't know his number or address?</p> <p>4 A. No.</p> <p>5 Q. Do you know where he lived?</p> <p>6 A. Do I know where he lived?</p> <p>7 Q. Yes.</p> <p>8 A. No. I'm sure the bank knows, but I</p> <p>9 don't know.</p> <p>10 Q. You don't know where he works now?</p> <p>11 A. No.</p> <p>12 Q. Do you know when he started working</p> <p>13 at Citibank?</p> <p>14 A. No, I can't remember, no.</p> <p>15 Q. Do you know when he finished?</p> <p>16 A. He finished three years ago, maybe,</p> <p>17 three or more. I'm not sure. I'm really not</p> <p>18 sure.</p> <p>19 Q. If you could take a look at</p> <p>20 Plaintiff's Exhibit 4 again, please?</p> <p>21 If you could look at the top there,</p> <p>22 it says, "CFA name Michael Ashley."</p> <p>23 A. Yeah.</p> <p>24 Q. What does that indicate, why is that</p> <p>25 there, do you know?</p>

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1 V. Safir
2 A. Because else's the one who opened the
3 account.
4 Q. Do you know who his supervisor was?
5 A. George Lotto.
6 Q. George Lotto.
7 I think I just have one more question
8 to just clear up.
9 So at the end of the process when a
10 client opens up a bank account, a savings
11 account or whatever account that you open up for
12 them, that's when you -- it prints out or you
13 put together all the documents that are required
14 to be provided to him, including the client
15 manual into the welcome kit --
16 A. (Witnesses nods.)
17 Q. -- and provide them at the end?
18 A. (Witnesses nods.)
19 Q. And what is it exactly you tell him,
20 you're giving him the welcome kit, and what
21 exactly do you tell him are in there again?
22 MR. STRAUSS: Objection to the form
23 of the question.
24 A. Tell what?
25 Q. Tell the client what is in the

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1 V. Safir
2 welcome kit?
3 A. Whatever is in there. Explain to him
4 what's in the welcome kit, show it to the
5 client.
6 Q. With respect to the client manual,
7 what do you say about that?
8 A. Well, this is the client manual, and
9 this is the addendum. It's all about the
10 accounts. Any questions you have, it's all in
11 there.
12 MR. KELLY: I think that's good.
13 Okay, we're done.
14 (Time noted: 11:28 a.m.)
15
16
17 VIVIAN SAFIR
18
19 Subscribed and sworn to before me
20 this day of , 2014.
21
22
23
24
25

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1 V. Safir
2 C E R T I F I C A T E
3
4 STATE OF NEW YORK)
5 : ss.
6 COUNTY OF NEW YORK)
7
8 I, NANCY SORENSEN, Notary Public
9 within and for the State of New York, do
10 hereby certify:
11 That VIVIAN SAFIR, the witness
12 whose deposition is hereinbefore set forth,
13 was duly sworn by me and that such
14 deposition is a true record of the
15 testimony given by the witness.
16 I further certify that I am not
17 related to any of the parties to this
18 action by blood or marriage, and that I am
19 in no way interested in the outcome of this
20 matter.
21 IN WITNESS WHEREOF, I have hereunto
22 set my hand this 19TH day of DECEMBER,
23 2013.
24
25 NANCY SORENSEN

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1 V. Safir
2 ----- I N D E X -----
3 WITNESS EXAMINATION BY PAGE
4 VIVIAN SAFIR MR. KELLY 4
5
6
7 ----- INFORMATION REQUESTS -----
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18 Bates numbered Citi 0000117
19
20 Plaintiff's Exhibit 2, a National Form 32
21 Center Citibank Bates numbered Citi-0000133
22
23
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25

<p style="text-align: right;">73</p> <p>1 V. Safir</p> <p>2 E X H I B I T S: (Cont'd)</p> <p>3</p> <p>4 Plaintiff's Exhibit 3, Personal Banker 36</p> <p>5 Foundations Participant Guide North America</p> <p>6 Consumer Bates number Citi-0000119 through</p> <p>7 Citi-0000132</p> <p>8</p> <p>9 Plaintiff's Exhibit 4, a Concierge Daily 45</p> <p>10 Transaction/Transmittal Report Bates</p> <p>11 numbered Citi-000079 through Citi-000080</p> <p>12</p> <p>13 Plaintiff's Exhibit 5, Client Manual 49</p> <p>14 Consumer Accounts Including Our Privacy</p> <p>15 Notice, U.S. Markets Effective January 1st,</p> <p>16 2010 Bates numbered Citi-0000001 through</p> <p>17 Citi-0000028</p> <p>18</p> <p>19 Plaintiff's Exhibit 6, a collection of 57</p> <p>20 different screen printouts Bates numbered</p> <p>21 Citibank-0000081 through Citibank-0000101</p> <p>22</p> <p>23 Plaintiff's Exhibit 7, the Constitution 66</p> <p>24 of the State of New York, Section 2, Trial</p> <p>25 By Jury Hail Waived</p>	<p style="text-align: right;">75</p> <p>1 V. Safir</p> <p>2 ERRATA SHEET</p> <p>3 VERITEXT REPORTING COMPANY</p> <p>4</p> <p>5 I wish to make the following changes, for</p> <p>6 the following reasons:</p> <p>7 PAGE LINE</p> <p>8 CHANGE FROM: _____</p> <p>9 REASON: _____</p> <p>10 CHANGE FROM: _____</p> <p>11 REASON: _____</p> <p>12 CHANGE FROM: _____</p> <p>13 REASON: _____</p> <p>14 CHANGE FROM: _____</p> <p>15 REASON: _____</p> <p>16 CHANGE FROM: _____</p> <p>17 REASON: _____</p> <p>18 REASON: _____</p> <p>19 VIVIAN SAFIR</p> <p>20 Subscribed and sworn to before me</p> <p>21 this _____ day of _____, 2014.</p> <p>22 _____</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">74</p> <p>1 V. Safir</p> <p>2 E X H I B I T S: (Cont'd)</p> <p>3</p> <p>4 Plaintiff's Exhibit 8, the Seventh 66</p> <p>5 Amendment of the U.S. Constitution</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 CASE No. 12 CIV 1124 (DAB)

5 -----X
6 BERTRAM HIRSCH and IGOR ROMANOV, on behalf
7 of themselves and all others similarly
8 situated,

9 Plaintiffs,

10 -against-

11 CITIBANK N.A. ,

12 Defendants.

13 -----X
14 75 North Station Plaza
15 Great Neck, New York

16 DATE: January 14, 2014

17 TIME: 11:03 a.m.

18 DEPOSITION of JACKLINE SARRAF, a
19 party in the above-entitled action, held
20 at the above time and place, taken before
21 Rosanna A. Russell, a Shorthand Reporter
22 and Notary public of the State of New
23 York, pursuant to the Federal Rules of
24 Civil Procedure, Notice and stipulations
25 between counsel.

* * * * *

<p style="text-align: right;">Page 2</p> <p>1 2 APPEARANCES: 3 4 SCHOENGOLD, SPORN, P.C. World Wide Plaza Attorneys for Plaintiffs 5 393 West 49th Street Suite 5HH 6 New York, New York, 10019 BY: SAMUEL P. SPORN, ESQ. 7 8 9 THE LAW OFFICE OF JAMES C. KELLY 244 Fifth Avenue-Suite K-278 New York, New York 10001 10 BY: JAMES KELLY, ESQ. 11 12 13 STROOCK & STROOCK & LAVAN, L.L.P. Attorneys for Defendant Citibank 180 Maiden Lane 14 New York, New York, 10038 BY: JOSEPH E. STRAUSS, ESQ. 15 16 17 ALSO PRESENT: 18 Bertram Hirsch * * * 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 JACKLINE SARRAF, residing at 15 3 Wooleys Lane East, Great Neck, New 4 York 11021, the witness herein, having 5 first been duly sworn/affirmed by the 6 Notary Public, was examined and 7 testified as follows: 8 EXAMINATION BY MR. SPORN: 9 Q Good morning, Ms. Sarraf. My 10 name is Samuel P. Sporn, and along with 11 Mr. Kelly, we represent the plaintiffs in 12 this action. 13 And you're represented Mr. 14 Strauss here. And we have Mr. Hirsch 15 attending as well. 16 What is your business address, 17 please? 18 A 111 Great Neck Road, Great Neck, 19 New York 11021. 20 Q And forgive my asking this 21 question, what's your date of birth? 22 A [REDACTED]. 23 Q And tell us about your -- before 24 we do that, during this deposition we 25 should go a short period and go through it</p>
<p style="text-align: right;">Page 3</p> <p>1 2 STIPULATIONS 3 IT IS HEREBY STIPULATED AND AGREED, by 4 and among counsel for the respective 5 parties hereto, that the filing, sealing 6 and certification of the within deposition 7 shall be and the same are hereby waived; 8 IT IS FURTHER STIPULATED AND AGREED 9 that all objections, except as to form of 10 the question, shall be reserved to the 11 time of the trial; 12 IT IS FURTHER STIPULATED AND AGREED 13 that the within deposition may be signed 14 before any Notary Public with the same 15 force and effect as if signed and sworn to 16 before the Court. 17 18 * * * 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 Jackline Sarraf 2 in hopefully an hour. And so if that's 3 okay with you, but if you need a break at 4 any time, you'll tell us if you need a 5 break. But that will count toward our 6 hour as well. 7 But in any event, have you ever 8 been deposed before? 9 A Never. 10 Q And tell us about your high 11 school education. Where did you go to 12 school? 13 A In Iran. 14 Q In Iran? 15 A Yes. 16 Q And where in Iran was that? 17 A Tehran, Iran. 18 Q Iran, okay. How old were you 19 when you came the U.S.? 20 A Eighteen. 21 Q Eighteen. Had you finished like 22 high school there? 23 A I finished high school there. 24 Q And did you come directly to the 25 Great Neck area?</p>

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<p style="text-align: right;">Page 6</p> <p>1 Jackline Sarraf</p> <p>2 A I first went to Canada for two</p> <p>3 years.</p> <p>4 Q I see. Where did you live in</p> <p>5 Canada?</p> <p>6 A Montreal.</p> <p>7 Q Montreal, that's my home birth.</p> <p>8 I was born in Montreal. All right, so</p> <p>9 then you came the U.S. What year was that</p> <p>10 that you came the U.S.?</p> <p>11 A 1976.</p> <p>12 Q 1976. Did you attend college</p> <p>13 after that?</p> <p>14 A Yes, I did.</p> <p>15 Q And where did you go?</p> <p>16 A Queensborough Community College.</p> <p>17 Q Queensborough, okay. And what</p> <p>18 did you study there?</p> <p>19 A Liberal Arts.</p> <p>20 Q And did you complete</p> <p>21 Queensborough?</p> <p>22 A Yes, I did.</p> <p>23 Q Did you get an associate?</p> <p>24 A Yes.</p> <p>25 Q Associate degree. And did you</p>	<p style="text-align: right;">Page 8</p> <p>1 Jackline Sarraf</p> <p>2 Q And tell us what your employment</p> <p>3 was after Queensborough?</p> <p>4 A I didn't work.</p> <p>5 Q You did not?</p> <p>6 A Until I got married, yes.</p> <p>7 Q So you got married. And when</p> <p>8 did you start to work?</p> <p>9 A 1981 when I got married.</p> <p>10 Q I see. Were you in the Great</p> <p>11 Neck area at that time?</p> <p>12 A Yes.</p> <p>13 Q And who did you work for? Who</p> <p>14 was your first employer?</p> <p>15 A Brandy Wine (phonetic). It was</p> <p>16 a manufacturer of lingerie in the city.</p> <p>17 Q And how long were you with them?</p> <p>18 A One year.</p> <p>19 Q And then what did you do?</p> <p>20 A I got pregnant and I didn't work</p> <p>21 again.</p> <p>22 Q And so when did you resume work?</p> <p>23 A Again I started to work?</p> <p>24 Q Yeah.</p> <p>25 A That was seventeen years ago</p>
<p style="text-align: right;">Page 7</p> <p>1 Jackline Sarraf</p> <p>2 continue after Queensborough?</p> <p>3 A No, I didn't.</p> <p>4 Q Had you studied English in Iran?</p> <p>5 A Yes, I did. I went to a</p> <p>6 bilingual school.</p> <p>7 Q I see. So then you came out.</p> <p>8 And what year did you finish</p> <p>9 Queensborough?</p> <p>10 A I don't remember very honestly.</p> <p>11 Q Roughly.</p> <p>12 A '79, I think.</p> <p>13 Q All right.</p> <p>14 A I'm not sure.</p> <p>15 Q And what did you study at</p> <p>16 Queensborough? What were your course</p> <p>17 curriculum?</p> <p>18 A Liberal Arts. I don't remember.</p> <p>19 That's a long time ago. I'm sorry.</p> <p>20 Q No, that's okay. Did you take</p> <p>21 any business courses in Queensborough?</p> <p>22 A I don't think so, no.</p> <p>23 Q Any business or law courses</p> <p>24 there?</p> <p>25 A Never.</p>	<p style="text-align: right;">Page 9</p> <p>1 Jackline Sarraf</p> <p>2 when I started with Citibank.</p> <p>3 Q Seventeen years ago, okay. And</p> <p>4 did you come to work in Great Neck here?</p> <p>5 A Manhasset -- Port Washington was</p> <p>6 the first when I started.</p> <p>7 Q And what was your first job with</p> <p>8 Citibank at that time?</p> <p>9 A Part-time teller.</p> <p>10 Q Part-time, all right. How long</p> <p>11 had you remained as a teller?</p> <p>12 A Eight and a half years.</p> <p>13 Q And you received a promotion</p> <p>14 after that?</p> <p>15 A Yes.</p> <p>16 Q To what step?</p> <p>17 A Service officer.</p> <p>18 Q And were you still in Port</p> <p>19 Washington at that time?</p> <p>20 A No, I was transferred Manhasset.</p> <p>21 Q How long did you stay in the</p> <p>22 Manhasset branch?</p> <p>23 A Around eight months, something</p> <p>24 like that.</p> <p>25 Q As a service --</p>

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<p style="text-align: right;">Page 10</p> <p>1 Jackline Sarraf</p> <p>2 A Yes, service officer.</p> <p>3 Q -- officer. Did you have an</p> <p>4 official title?</p> <p>5 A It was a service officer.</p> <p>6 Q Were you a vice-president?</p> <p>7 A No.</p> <p>8 Q Nothing?</p> <p>9 A No.</p> <p>10 Q Just service officer?</p> <p>11 A Yes, sir.</p> <p>12 Q Okay. And from Manhasset, how</p> <p>13 long were you there?</p> <p>14 A About six to eight months.</p> <p>15 Q And then what happened?</p> <p>16 A And then I became a trainee to</p> <p>17 train as an assistant branch manager.</p> <p>18 Q And where was your next</p> <p>19 employment after that?</p> <p>20 A Old Brookville.</p> <p>21 Q In --</p> <p>22 A Old Brookville.</p> <p>23 Q And how long were you there?</p> <p>24 A A year and a half.</p> <p>25 Q Now from the Old Brookville,</p>	<p style="text-align: right;">Page 12</p> <p>1 Jackline Sarraf</p> <p>2 you?</p> <p>3 A They don't use it any more.</p> <p>4 They haven't used that term for a long</p> <p>5 time, so I really don't remember what it</p> <p>6 was for, but I remember the title.</p> <p>7 Q I see. Do you have an idea when</p> <p>8 they stopped using that term?</p> <p>9 A No.</p> <p>10 Q But the CFA, did that suggest or</p> <p>11 denote that the CFA had a certified</p> <p>12 governmental backing, whether a state or</p> <p>13 a --</p> <p>14 A I really wouldn't know.</p> <p>15 Q Whether they were accredited</p> <p>16 with any college or institute?</p> <p>17 A I wouldn't know.</p> <p>18 Q Did not know?</p> <p>19 A No, sir.</p> <p>20 Q So you would overlook some of</p> <p>21 the CFA's who were signing up customers</p> <p>22 for the bank?</p> <p>23 A I would review the work papers</p> <p>24 and review the account openings to make</p> <p>25 sure everything was done right. But other</p>
<p style="text-align: right;">Page 11</p> <p>1 Jackline Sarraf</p> <p>2 where did you go from there?</p> <p>3 A They transferred me to Plandome</p> <p>4 branch.</p> <p>5 Q Spell that.</p> <p>6 A P-L-A-N-D-O-M-E.</p> <p>7 Q Yes?</p> <p>8 A That's it.</p> <p>9 Q I see. And what was your title</p> <p>10 at the time they transferred you?</p> <p>11 A I was an assistant branch</p> <p>12 manager.</p> <p>13 Q What were your duties as an</p> <p>14 assistant branch manager?</p> <p>15 A Just reviewing the work, making</p> <p>16 sure there are no frauds, making sure the</p> <p>17 account openings were right.</p> <p>18 Q Did you have supervision over a</p> <p>19 so-called CFA, a client financial</p> <p>20 assistant?</p> <p>21 A No.</p> <p>22 Q Did you ever hear that term</p> <p>23 before, CFA?</p> <p>24 A Yes.</p> <p>25 Q And what does that term mean to</p>	<p style="text-align: right;">Page 13</p> <p>1 Jackline Sarraf</p> <p>2 than that, the rest was up to the branch</p> <p>3 manager.</p> <p>4 Q I see. And when did you get</p> <p>5 transferred to Great Neck office?</p> <p>6 A From Plandome I went to Sea</p> <p>7 Cliff. I was there for two years. And</p> <p>8 after that I was transferred there. It</p> <p>9 would be about three years ago.</p> <p>10 Q Three years ago?</p> <p>11 A Yes.</p> <p>12 Q Do you recognize Mr. Hirsch</p> <p>13 across the room?</p> <p>14 A I'm sorry, no, I don't.</p> <p>15 Q You do not?</p> <p>16 A No.</p> <p>17 Q So three years from 2014 is</p> <p>18 what, '11?</p> <p>19 A About. Maybe the middle of 2010</p> <p>20 I was transferred. I'm really not</p> <p>21 certain.</p> <p>22 Q So somewhere in 2010 --</p> <p>23 A I think it was somewhere in</p> <p>24 2010. I'm really not certain about the</p> <p>25 exact time.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Jackline Sarraf</p> <p>2 Q Okay. Are you familiar with the</p> <p>3 litigation Hirsch and Romanov versus</p> <p>4 Citibank, are you familiar with it?</p> <p>5 A Not completely, no.</p> <p>6 Q Not completely?</p> <p>7 A No.</p> <p>8 Q And in which way are you</p> <p>9 familiar with it?</p> <p>10 A I just know there is something</p> <p>11 going on. I wasn't told clearly about it.</p> <p>12 I'm just her to answer your questions to</p> <p>13 the best of my knowledge.</p> <p>14 Q Okay. So when you went into the</p> <p>15 Citibank office in Great Neck, did you</p> <p>16 still have the same title?</p> <p>17 A No, I didn't.</p> <p>18 Q What was your title when you got</p> <p>19 to Citibank?</p> <p>20 A I became a service officer</p> <p>21 again.</p> <p>22 Q A service officer, no longer an</p> <p>23 assistant, is that it?</p> <p>24 A No, I stepped down as assistant</p> <p>25 manager.</p>	<p style="text-align: right;">Page 16</p> <p>1 Jackline Sarraf</p> <p>2 A No.</p> <p>3 Q Never saw him?</p> <p>4 A I might have seen him in</p> <p>5 meetings and stuff, but I never knew the</p> <p>6 gentlemen.</p> <p>7 Q Okay. And he's still at the</p> <p>8 bank?</p> <p>9 A Yes.</p> <p>10 Q He is the branch manager for the</p> <p>11 bank now?</p> <p>12 A Yes, sir.</p> <p>13 Q What were your duties as service</p> <p>14 officer when you first got to Great Neck?</p> <p>15 A Just doing service, trying to</p> <p>16 help customers with the issues that they</p> <p>17 had to the best of my knowledge, to take</p> <p>18 care of it.</p> <p>19 Q Did you have your own office?</p> <p>20 A No.</p> <p>21 Q You were on the floor?</p> <p>22 A Yes, sir.</p> <p>23 Q And did you know a gentleman by</p> <p>24 the name of Michael Ashley?</p> <p>25 A I never worked with the</p>
<p style="text-align: right;">Page 15</p> <p>1 Jackline Sarraf</p> <p>2 Q Oh, it was a demotion, so to</p> <p>3 speak?</p> <p>4 A It wasn't a demotion. I decided</p> <p>5 to step down.</p> <p>6 Q And was that for personal</p> <p>7 reasons?</p> <p>8 A Yes. My father passed away.</p> <p>9 Q Oh, I'm sorry to hear that.</p> <p>10 A Yes.</p> <p>11 Q So did that result in a lower of</p> <p>12 pay for you?</p> <p>13 A No.</p> <p>14 Q So you had the same pay?</p> <p>15 A Yes, sir.</p> <p>16 Q What were your duties as -- it</p> <p>17 is now called branch manager?</p> <p>18 A I wasn't a branch manager, sir.</p> <p>19 I was a service officer.</p> <p>20 Q Service officer. Now who was</p> <p>21 the head of the Great Neck office when you</p> <p>22 first came?</p> <p>23 A Mr. George Lotto, L-O-T-T-O.</p> <p>24 Q Had you ever met Mr. Lotto</p> <p>25 before you got assigned to Great Neck?</p>	<p style="text-align: right;">Page 17</p> <p>1 Jackline Sarraf</p> <p>2 gentlemen, no. I know his name, but I</p> <p>3 never worked with him.</p> <p>4 Q So you never saw any of his</p> <p>5 papers?</p> <p>6 A No, never.</p> <p>7 Q Or any of his paperwork?</p> <p>8 A No.</p> <p>9 Q And did you oversee any other</p> <p>10 so-called CFA's?</p> <p>11 A Never, not in the Great Neck</p> <p>12 branch office.</p> <p>13 Q Tell us what your training was</p> <p>14 when you first got initial training from</p> <p>15 Citibank?</p> <p>16 A For which part of my job?</p> <p>17 Q In the beginning when you became</p> <p>18 an assistant service officer.</p> <p>19 MR. STRAUSS: You mean --</p> <p>20 A Assistant branch manager?</p> <p>21 Q Way back, when you go back to</p> <p>22 your training as assistant branch manager.</p> <p>23 A I worked with the area operation</p> <p>24 manager for a year and we went from branch</p> <p>25 to branch to review paperwork and make</p>

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<p style="text-align: right;">Page 18</p> <p>1 Jackline Sarraf</p> <p>2 sure that everything is being done the</p> <p>3 right way.</p> <p>4 Q Does Citibank have a training</p> <p>5 program or school --</p> <p>6 A They used to have, but they</p> <p>7 don't have any more.</p> <p>8 Q And that was how long ago before</p> <p>9 Great Neck?</p> <p>10 A Right after I left Manhasset</p> <p>11 branch. I don't remember the exact year.</p> <p>12 Q Okay. Now have you seen a</p> <p>13 client document called client manual?</p> <p>14 A I don't have those. Only the</p> <p>15 personal bankers have it. Personal</p> <p>16 bankers hand that out when they open</p> <p>17 accounts.</p> <p>18 Q Now how many people at Great</p> <p>19 Neck were signing in new customers at the</p> <p>20 time you first came to Great Neck?</p> <p>21 A What do you mean signing in?</p> <p>22 Q How many individuals, male,</p> <p>23 female were actually discussing with</p> <p>24 clients as to becoming a new client?</p> <p>25 A Opening accounts you're talking</p>	<p style="text-align: right;">Page 20</p> <p>1 Jackline Sarraf</p> <p>2 a teller right now, and they wouldn't let</p> <p>3 me review anything.</p> <p>4 Q Well --</p> <p>5 A I'm not allowed to review any of</p> <p>6 his accounts.</p> <p>7 Q Well you're not a teller any</p> <p>8 more.</p> <p>9 A Yes, I am.</p> <p>10 Q Aren't you a service officer?</p> <p>11 A No, I was demoted -- they got</p> <p>12 rid of the position of the service officer</p> <p>13 about two and a half years ago, and I</p> <p>14 decided to become a teller. So now I'm a</p> <p>15 teller.</p> <p>16 Q So are you like behind a</p> <p>17 counter?</p> <p>18 A Yes, sir.</p> <p>19 Q Is that what you're doing now?</p> <p>20 A Yes, I do.</p> <p>21 Q I see, okay. Were you familiar</p> <p>22 with a document that I'm going to</p> <p>23 introduce as One?</p> <p>24 MR. SPORN: Let me introduce</p> <p>25 this document. It has been used</p>
<p style="text-align: right;">Page 19</p> <p>1 Jackline Sarraf</p> <p>2 about?</p> <p>3 Q Yes.</p> <p>4 A I believe at the time there were</p> <p>5 two.</p> <p>6 Q And in addition to Mr. Ashley</p> <p>7 there was --</p> <p>8 A Mr. Ashley wasn't there when I</p> <p>9 went to that branch.</p> <p>10 Q So do you think you came in</p> <p>11 after Mr. Ashley left?</p> <p>12 A Yes, sir. I never worked with</p> <p>13 Mr. Ashley.</p> <p>14 Q I see. Mr. Ashley testified</p> <p>15 earlier that he left around Election Day</p> <p>16 in 2010.</p> <p>17 A I don't remember, because I</p> <p>18 didn't work with the gentlemen, sir.</p> <p>19 That's why I said, I don't know when I</p> <p>20 came to the Great Neck branch, but I never</p> <p>21 worked with him.</p> <p>22 Q Now in preparation for this</p> <p>23 deposition today, did you seek to look</p> <p>24 over any of Mr. Bertram Hirsch's accounts?</p> <p>25 A I'm not allowed, sir. I'm just</p>	<p style="text-align: right;">Page 21</p> <p>1 Jackline Sarraf</p> <p>2 before, and maybe it's a little</p> <p>3 redundant, but let me show this to</p> <p>4 your client. We will call it Document</p> <p>5 One for Ms. Sarraf. You can mark</p> <p>6 that.</p> <p>7 (Whereupon a document was so</p> <p>8 marked as Plaintiff's Exhibit One for</p> <p>9 identification.)</p> <p>10 (Handed.)</p> <p>11 Q So my question is, looking at</p> <p>12 this document, does this look familiar to</p> <p>13 you at all?</p> <p>14 A Yes, of course it does.</p> <p>15 Q How does it?</p> <p>16 A Because I used to review these,</p> <p>17 sir, when I was an assistant manager.</p> <p>18 Q So this form is a form that has</p> <p>19 been used in the past with Citibank?</p> <p>20 A Always been used. This is what</p> <p>21 prints out after an account opening.</p> <p>22 Q Okay. Now you'll notice</p> <p>23 underneath CFA name it says Michael</p> <p>24 Ashley. There's a number. Do you see</p> <p>25 there is like an identification number?</p>

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<p style="text-align: right;">Page 22</p> <p>1 Jackline Sarraf</p> <p>2 A Yes, sir.</p> <p>3 Q Does the bank have a reference</p> <p>4 on Michael Ashley? Do they have a</p> <p>5 personal reference --</p> <p>6 A What do you mean by a personal</p> <p>7 reference?</p> <p>8 Q Like a personal reference file</p> <p>9 of his background, his marks?</p> <p>10 A They should.</p> <p>11 Q They contain that?</p> <p>12 A I don't know.</p> <p>13 Q Did you ever ask anyone at the</p> <p>14 bank, including Mr. Lotto, the performance</p> <p>15 of Michael Ashley in his work in signing</p> <p>16 up customers?</p> <p>17 A No.</p> <p>18 Q You never did?</p> <p>19 A That's not my job.</p> <p>20 Q Now did you ask Mr. Lotto or</p> <p>21 anyone at the bank to look over any</p> <p>22 existing documents or papers relating to</p> <p>23 Mr. Bertram Hirsch before coming today?</p> <p>24 MR. STRAUSS: Objection, asked</p> <p>25 and answered.</p>	<p style="text-align: right;">Page 24</p> <p>1 Jackline Sarraf</p> <p>2 (Whereupon a document was so</p> <p>3 marked as Plaintiff's Exhibit Two for</p> <p>4 identification.)</p> <p>5 (Handed.)</p> <p>6 Q Looking at that page, does that</p> <p>7 appear to be familiar to you?</p> <p>8 A Of course.</p> <p>9 Q And you'll notice it says</p> <p>10 effective July 1, 2010.</p> <p>11 A A-hum.</p> <p>12 Q Now on the page itself, is there</p> <p>13 any word, whether it's called agreement or</p> <p>14 contract on that page that you see?</p> <p>15 MR. STRAUSS: Objection. It</p> <p>16 says what it says.</p> <p>17 Q Okay, you may answer it.</p> <p>18 MR. STRAUSS: You're asking her</p> <p>19 if the word agreement appears?</p> <p>20 Q As you're looking at it, is</p> <p>21 there any word, whether it's an agreement</p> <p>22 or a contract, is there anything on that</p> <p>23 that catches you to say that?</p> <p>24 MR. STRAUSS: Are you asking her</p> <p>25 whether the word agreement or contract</p>
<p style="text-align: right;">Page 23</p> <p>1 Jackline Sarraf</p> <p>2 Q But you may answer it.</p> <p>3 MR. STRAUSS: You can answer.</p> <p>4 A No.</p> <p>5 Q So are you familiar with a</p> <p>6 client manual that's published by Citibank</p> <p>7 with reference to clients? Are you</p> <p>8 familiar with that term?</p> <p>9 MR. STRAUSS: Objection. I</p> <p>10 believe you asked her that already.</p> <p>11 You can answer.</p> <p>12 Q Your answer?</p> <p>13 A I said I know it's given to the</p> <p>14 customers, but I don't have access to it.</p> <p>15 MR. SPORN: Okay, now I'm going</p> <p>16 to introduce as document two a first</p> <p>17 page, that has been provided by</p> <p>18 counsel, and it bears document number</p> <p>19 Citi 0000155, and it's entitled,</p> <p>20 client manual, consumer accounts</p> <p>21 including our privacy notice. And</p> <p>22 underneath it says U.S. markets,</p> <p>23 effective July 1, 2010. So let me</p> <p>24 mark this as document two. And I'm</p> <p>25 giving it to your lawyer.</p>	<p style="text-align: right;">Page 25</p> <p>1 Jackline Sarraf</p> <p>2 appears on that first page?</p> <p>3 MR. SPORN: I'm asking her that,</p> <p>4 her answer on that.</p> <p>5 MR. STRAUSS: You can answer.</p> <p>6 A No.</p> <p>7 Q Now there came a time in the</p> <p>8 course of your working with Citibank that</p> <p>9 you did sign up new accounts, am I</p> <p>10 correct?</p> <p>11 MR. STRAUSS: Objection.</p> <p>12 A I never opened accounts.</p> <p>13 Q Oh, you never did?</p> <p>14 A (Witness shakes head.)</p> <p>15 Q But do I understand you</p> <p>16 correctly to say that you did oversee some</p> <p>17 CFA's on the paperwork that they made when</p> <p>18 they opened up accounts, is that correct?</p> <p>19 A I would just review this page.</p> <p>20 Q You just reviewed what would be</p> <p>21 document one?</p> <p>22 A Yes.</p> <p>23 Q That's it?</p> <p>24 A That's it.</p> <p>25 Q Period?</p>

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<p style="text-align: right;">Page 26</p> <p>1 Jackline Sarraf</p> <p>2 A Period.</p> <p>3 Q So you never saw a receipt by a</p> <p>4 customer of any of the, any other document</p> <p>5 that might have been signed by a customer</p> <p>6 in the opening of an account, did you?</p> <p>7 MR. STRAUSS: Objection to form.</p> <p>8 Q Do you know what I'm saying?</p> <p>9 MR. STRAUSS: Do you understand?</p> <p>10 Q Other than seeing that document</p> <p>11 one, you did not see any other paper that</p> <p>12 was supposedly signed or possibly signed?</p> <p>13 A Just the signature card that</p> <p>14 would be attached to this sheet.</p> <p>15 Q The signature card?</p> <p>16 A Yes, sir.</p> <p>17 Q Okay. But you never saw a</p> <p>18 client give -- signing a receipt or an</p> <p>19 agreement to the client manual, did you?</p> <p>20 MR. STRAUSS: Objection to form.</p> <p>21 Vague and compound.</p> <p>22 Q You can answer, you can answer</p> <p>23 it.</p> <p>24 MR. STRAUSS: Can you read that</p> <p>25 back?</p>	<p style="text-align: right;">Page 28</p> <p>1 Jackline Sarraf</p> <p>2 MR. STRAUSS: Objection to form.</p> <p>3 Q Am I correct?</p> <p>4 A You're asking the same question</p> <p>5 again and again.</p> <p>6 Q And your answer is?</p> <p>7 A I gave you the answer the first</p> <p>8 time.</p> <p>9 Q That the client was not asked to</p> <p>10 sign this and did not sign a receipt or</p> <p>11 acknowledgment?</p> <p>12 A They never signed that.</p> <p>13 MR. STRAUSS: Objection, vague.</p> <p>14 Q Now do you know if it was an</p> <p>15 obligation of the CFA in talking to a new</p> <p>16 customer to seek to review any part of the</p> <p>17 client manual with the new customer?</p> <p>18 A I wouldn't know.</p> <p>19 Q You have no idea whether or not</p> <p>20 the CFA would try to discuss this</p> <p>21 document, which has about forty-seven</p> <p>22 pages?</p> <p>23 A I wouldn't know. I'm never in</p> <p>24 that room to see what they're talking</p> <p>25 about.</p>
<p style="text-align: right;">Page 27</p> <p>1 Jackline Sarraf</p> <p>2 (Whereupon, the record was read</p> <p>3 by the court reporter.)</p> <p>4 MR. SPORN: Let me rephrase this</p> <p>5 question.</p> <p>6 MR. STRAUSS: Try to rephrase</p> <p>7 it.</p> <p>8 MR. SPORN: The syntax is a</p> <p>9 little wordy there. I'll rephrase it.</p> <p>10 Q Did you ever see, in overseeing</p> <p>11 any of the documents that you looked at</p> <p>12 when a CFA would open up an account, ever</p> <p>13 see a client signing a client manual</p> <p>14 receipt or acknowledgment, did you ever</p> <p>15 see that?</p> <p>16 MR. STRAUSS: Objection to form.</p> <p>17 MR. SPORN: You may answer.</p> <p>18 A Nobody ever signs for that.</p> <p>19 That's something that's given to the</p> <p>20 customer.</p> <p>21 Q So as far as you know in your</p> <p>22 experience, the client, a new client was</p> <p>23 not asked to sign a receipt or</p> <p>24 acknowledgment as to his client manual,</p> <p>25 did he?</p>	<p style="text-align: right;">Page 29</p> <p>1 Jackline Sarraf</p> <p>2 Q But you had overseeing</p> <p>3 possibilities?</p> <p>4 MR. STRAUSS: Objection.</p> <p>5 A I'm not in the room.</p> <p>6 Q I know you're not in the room.</p> <p>7 But you did say, as a service officer</p> <p>8 assistant, you would oversee the so-called</p> <p>9 paperwork?</p> <p>10 A Just this.</p> <p>11 Q And the only thing was document</p> <p>12 one?</p> <p>13 MR. STRAUSS: She said that</p> <p>14 already. So I'm just going to object.</p> <p>15 Asked and answered. She's been very</p> <p>16 specific and clear about what she</p> <p>17 reviewed.</p> <p>18 MR. SPORN: Okay.</p> <p>19 Q Well as an assistant service</p> <p>20 manager --</p> <p>21 A I'm not an assistant branch</p> <p>22 manager when I was in Great Neck.</p> <p>23 Q But prior to that there was a</p> <p>24 time --</p> <p>25 A Yes, sir.</p>

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<p style="text-align: right;">Page 30</p> <p>1 Jackline Sarraf</p> <p>2 Q -- that you were an assistant</p> <p>3 branch manager?</p> <p>4 A Yes.</p> <p>5 Q Do you know whether Mr. Ashley</p> <p>6 received the same training that you</p> <p>7 received?</p> <p>8 A I wouldn't know.</p> <p>9 Q Let me ask you --</p> <p>10 MR. STRAUSS: Would you like to</p> <p>11 take a break?</p> <p>12 MR. SPORN: Yeah, one moment</p> <p>13 pause.</p> <p>14 Q My question is, do you know</p> <p>15 whether the training you received from</p> <p>16 Citibank was the same or substantially the</p> <p>17 same as the CFA would receive in signing</p> <p>18 up new customers?</p> <p>19 A No, they're different.</p> <p>20 Q They are different?</p> <p>21 A Yes, sir.</p> <p>22 Q And can you tell me what the</p> <p>23 difference?</p> <p>24 A I don't know the difference</p> <p>25 between theirs. I was totally different</p>	<p style="text-align: right;">Page 32</p> <p>1 Jackline Sarraf</p> <p>2 transactions, have you dealt with the</p> <p>3 customers in any respect thereto?</p> <p>4 A Or stop payments and stuff like</p> <p>5 that, yes.</p> <p>6 Q You do?</p> <p>7 A I use to. Not any more.</p> <p>8 Q And when was the last time you</p> <p>9 would deal with clients directly?</p> <p>10 A About two and a half years ago</p> <p>11 when I stopped being a service officer.</p> <p>12 Q Did you have any conversation</p> <p>13 with Mr. George Lotto before you came to</p> <p>14 testify today about Mr. Hirsch and this</p> <p>15 case?</p> <p>16 A No.</p> <p>17 Q Or anyone else in the bank?</p> <p>18 A No.</p> <p>19 Q Did you speak to Ms. Saffer</p> <p>20 (phonetic)?</p> <p>21 A She just told me you were going</p> <p>22 to go there, they were going to ask me</p> <p>23 questions and answer as truthfully as</p> <p>24 possible.</p> <p>25 Q Are you familiar with the term</p>
<p style="text-align: right;">Page 31</p> <p>1 Jackline Sarraf</p> <p>2 training than a CFA.</p> <p>3 Q Now did any of your training, as</p> <p>4 assistant branch officer, have anything to</p> <p>5 do with opening up accounts?</p> <p>6 A I reviewed the accounts. I had</p> <p>7 to look for the documents that were needed</p> <p>8 to open the accounts.</p> <p>9 Q And the document was this one</p> <p>10 document?</p> <p>11 A That's the only sheet I</p> <p>12 reviewed, yes, sir.</p> <p>13 Q Now in the course of your</p> <p>14 training and work with Citibank, did you</p> <p>15 ever read this client manual?</p> <p>16 A Never.</p> <p>17 Q You never looked at it?</p> <p>18 A No.</p> <p>19 Q Do you have contact with any --</p> <p>20 I know now you're a teller, but my</p> <p>21 question is, have you ever had any contact</p> <p>22 with any of the customers regarding</p> <p>23 obligations, such as charges for stopping</p> <p>24 a check or cancelling a check or the rate</p> <p>25 for charging them for various</p>	<p style="text-align: right;">Page 33</p> <p>1 Jackline Sarraf</p> <p>2 arbitration?</p> <p>3 A Sort of, not really.</p> <p>4 Q What's your understanding of</p> <p>5 that term?</p> <p>6 A That the lawyers sit and they</p> <p>7 figure out an amount to give to the</p> <p>8 plaintiff.</p> <p>9 Q Does it come out that sometimes</p> <p>10 the Citibank wins and they don't give</p> <p>11 money to the plaintiff?</p> <p>12 A I never got into that. I never</p> <p>13 heard of something like this in seventeen</p> <p>14 years, so I don't know.</p> <p>15 Q So do you know whether there's</p> <p>16 any difference between the term</p> <p>17 arbitration and going into a lawsuit in</p> <p>18 court?</p> <p>19 A Yeah, arbitration avoids the</p> <p>20 court time and going to the judge and</p> <p>21 everything. This is something out of the</p> <p>22 court system.</p> <p>23 Q Okay.</p> <p>24 A I've seen too many SVU TV shows.</p> <p>25 I know that part.</p>

<p style="text-align: right;">Page 34</p> <p>1 Jackline Sarraf</p> <p>2 Q SVU?</p> <p>3 A SVU, Law and Order.</p> <p>4 Q Oh, Law and Order, I see.</p> <p>5 MR. STRAUSS: Special Victims</p> <p>6 Unit.</p> <p>7 Q Do you have any idea when there</p> <p>8 was an arbitration first put into any</p> <p>9 paperwork of Citibank?</p> <p>10 A No.</p> <p>11 Q You have no idea when that</p> <p>12 happened?</p> <p>13 A No.</p> <p>14 Q Have you ever heard of a</p> <p>15 constitutional requirement in the State of</p> <p>16 New York whereby there's a right to trial</p> <p>17 by a jury, have you ever heard of that?</p> <p>18 MR. STRAUSS: Objection.</p> <p>19 A I don't know what you mean by</p> <p>20 that even.</p> <p>21 MR. SPORN: Let me introduce</p> <p>22 document three.</p> <p>23 (Whereupon a document was so</p> <p>24 marked as Plaintiff's Exhibit Three</p> <p>25 for identification.)</p>	<p style="text-align: right;">Page 36</p> <p>1 Jackline Sarraf</p> <p>2 A No.</p> <p>3 Q And look at the phrase where it</p> <p>4 says, the constitutional provision shall</p> <p>5 remain inviolate forever. Do you see</p> <p>6 that?</p> <p>7 A Yes.</p> <p>8 Q What does that mean to you, that</p> <p>9 it shall remain inviolate forever?</p> <p>10 A I really don't know.</p> <p>11 Q Do you understand the word</p> <p>12 inviolate?</p> <p>13 A Not really. This is too many</p> <p>14 words that I don't understand.</p> <p>15 Q How about the word violate?</p> <p>16 A Violate I understand, yes, sir.</p> <p>17 Q So this is the opposite of</p> <p>18 violate, this is the opposite inviolate.</p> <p>19 A Okay.</p> <p>20 Q So here it says that trial by</p> <p>21 jury in all cases in which it has</p> <p>22 heretofore been guaranteed by</p> <p>23 constitutional provision shall remain</p> <p>24 inviolate forever. You see that?</p> <p>25 A Yes, sir.</p>
<p style="text-align: right;">Page 35</p> <p>1 Jackline Sarraf</p> <p>2 (Handed.)</p> <p>3 Q Okay, you see it's entitled NY</p> <p>4 CLS Const Article One, Section Two. And</p> <p>5 Section Two says, trial by jury, how</p> <p>6 waived. You can read the first sentence,</p> <p>7 I'll read it, trial by jury in all cases</p> <p>8 in which it has heretofore been guaranteed</p> <p>9 by constitutional provision shall remain</p> <p>10 inviolate forever. And then it goes on to</p> <p>11 say.</p> <p>12 Now, have you ever heard before</p> <p>13 in your experience that there is a right</p> <p>14 to a trial by jury in the State of New</p> <p>15 York?</p> <p>16 MR. STRAUSS: Objection. She's</p> <p>17 not an attorney and she is not here to</p> <p>18 testify as to legal issues. You can</p> <p>19 continue that objection so I don't</p> <p>20 have to keep objecting for this entire</p> <p>21 line of questioning.</p> <p>22 Q You may answer. I'm asking if</p> <p>23 you are aware of that or not?</p> <p>24 A No.</p> <p>25 Q You never heard of that?</p>	<p style="text-align: right;">Page 37</p> <p>1 Jackline Sarraf</p> <p>2 Q Now are you aware that there's,</p> <p>3 in the Federal Constitution of the United</p> <p>4 States of America, a section Seventh</p> <p>5 Amendment, which I will introduce as four,</p> <p>6 which says Seventh Amendment, civil</p> <p>7 trials.</p> <p>8 (Whereupon a document was so</p> <p>9 marked as Plaintiff's Exhibit Four for</p> <p>10 identification.)</p> <p>11 MR. STRAUSS: Same objection.</p> <p>12 MR. SPORN: We understand your</p> <p>13 objection. The client can answer</p> <p>14 these questions.</p> <p>15 Q Can you read it, can you read</p> <p>16 that, please, Ms. Sarraf?</p> <p>17 A Yes, you want me to read out</p> <p>18 loud?</p> <p>19 Q Yes.</p> <p>20 A In suits at common law, where</p> <p>21 the value in controversy shall exceed \$20,</p> <p>22 the right of trial by jury shall be</p> <p>23 preserved, and no fact tried by a jury</p> <p>24 shall be otherwise re-examined in any</p> <p>25 Court of the United States, than according</p>

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<p style="text-align: right;">Page 38</p> <p>1 Jackline Sarraf</p> <p>2 to the rules of the common law.</p> <p>3 Q Now have you ever heard or seen</p> <p>4 language to this effect?</p> <p>5 A No, sir.</p> <p>6 Q You've heard of the Bill of</p> <p>7 Rights of the Constitution?</p> <p>8 A Of course I have, yes.</p> <p>9 Q And this says Seventh Amendment?</p> <p>10 A Yes. I don't know it by heart.</p> <p>11 I agree with what you're saying, yeah.</p> <p>12 Q Did you ever ask Mr. Lotto</p> <p>13 whether in the Great Neck branch there was</p> <p>14 any document, any paper where, other than</p> <p>15 document one, where Mr. Hirsch signed an</p> <p>16 initial card, whether there were any</p> <p>17 further documents in the branch regarding</p> <p>18 his account?</p> <p>19 MR. STRAUSS: Objection. She</p> <p>20 testified she never talked to Mr.</p> <p>21 Lotto.</p> <p>22 Q Are you saying you never talked</p> <p>23 to Mr. Lotto?</p> <p>24 A I never spoke to Mr. Lotto about</p> <p>25 this thing at all. He just told me I have</p>	<p style="text-align: right;">Page 40</p> <p>1 Jackline Sarraf</p> <p>2 Airlines.</p> <p>3 A We have a lot of promotions that</p> <p>4 give points. Maybe at that time when he</p> <p>5 opened his account there was something</p> <p>6 with that. We have that all the time.</p> <p>7 Q So at present there are</p> <p>8 promotional accounts going on?</p> <p>9 A Right now there are promotionals</p> <p>10 going on, but since it's the new year, I</p> <p>11 don't know which ones they are.</p> <p>12 (Pause in the proceedings.)</p> <p>13 Q Did the name of a Nancy Lewis</p> <p>14 (phonetic) from Citibank ever contact you</p> <p>15 about this case with Mr. Hirsch?</p> <p>16 A No.</p> <p>17 Q How about a Joan Haslam,</p> <p>18 H-A-S-L-A-M?</p> <p>19 A No.</p> <p>20 Q You're not aware of anyone --</p> <p>21 A The only person who contacted me</p> <p>22 was this gentleman yesterday.</p> <p>23 Q And that's Mr. Joseph Strauss?</p> <p>24 A Yes.</p> <p>25 MR. STRAUSS: The one and only.</p>
<p style="text-align: right;">Page 39</p> <p>1 Jackline Sarraf</p> <p>2 to come here for a deposition. He never</p> <p>3 told me what about and I never asked.</p> <p>4 Q Okay. Do you have any</p> <p>5 recollection of Mr. Hirsch coming into the</p> <p>6 Great Neck branch and speaking to you</p> <p>7 about his account at Citibank?</p> <p>8 A I don't remember. I'm sorry.</p> <p>9 Q No?</p> <p>10 A No.</p> <p>11 Q Do you have any recollection of</p> <p>12 his talking to you about a 1099 that</p> <p>13 Citibank caused to be served to him?</p> <p>14 A I really don't remember, sir. I</p> <p>15 apologize, I really don't remember.</p> <p>16 Q Are you familiar with a</p> <p>17 promotional account whereby Citibank would</p> <p>18 seek from it's client a sum of \$25,000, in</p> <p>19 exchange for which they would be getting</p> <p>20 free milage?</p> <p>21 MR. STRAUSS: Objection.</p> <p>22 Q Free milage for American Express</p> <p>23 travel?</p> <p>24 A We don't have American Express.</p> <p>25 Q I don't mean -- I mean American</p>	<p style="text-align: right;">Page 41</p> <p>1 Jackline Sarraf</p> <p>2 Q And how about a person by the</p> <p>3 name of Nancy Chin (phonetic), did a Nancy</p> <p>4 Chin from Citibank ever contact you?</p> <p>5 A No.</p> <p>6 Q I just want to be absolutely</p> <p>7 clear, because I showed you a document</p> <p>8 with the first page four zeros 155 client</p> <p>9 manual, consumer accounts.</p> <p>10 A Yes.</p> <p>11 Q Is it your testimony that you</p> <p>12 had never looked through a document such</p> <p>13 as this client manual while you worked for</p> <p>14 Citibank?</p> <p>15 A Yes, sir.</p> <p>16 Q The answer is --</p> <p>17 A I never looked at it. I never</p> <p>18 read it.</p> <p>19 MR. SPORN: I'm going to</p> <p>20 introduce a document with the number</p> <p>21 four zeros 178. I do this, Mr.</p> <p>22 Strauss, not to have the whole</p> <p>23 document in total evidence. I took</p> <p>24 pages of it, but I'm showing it to</p> <p>25 you, which comes out of your client's</p>

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<p style="text-align: right;">Page 42</p> <p>1 Jackline Sarraf</p> <p>2 manual dated effective July 1, 2010.</p> <p>3 And would you mark this?</p> <p>4 (Whereupon a document was so</p> <p>5 marked as Plaintiff's Exhibit Five for</p> <p>6 identification.)</p> <p>7 Q Ms. Sarraf, what I'm showing you</p> <p>8 is page sixty-six from what your lawyer</p> <p>9 has given to us --</p> <p>10 MR. STRAUSS: Objection. It's</p> <p>11 not sixty-six, Sam.</p> <p>12 MR. SPORN: Did I say sixty-six?</p> <p>13 MR. STRAUSS: Yeah.</p> <p>14 Q Forty-six, I'm sorry. It's</p> <p>15 forty-six. I'm representing that this</p> <p>16 came from the client manual which says,</p> <p>17 effective July 1, 2010.</p> <p>18 And go down to the language on</p> <p>19 the bottom of that page. And would you go</p> <p>20 down to the very end, beginning with the</p> <p>21 term, no provision. Can you read that,</p> <p>22 Ms. Sarraf?</p> <p>23 A No provision of this arbitration</p> <p>24 provision may be amended, served or --</p> <p>25 Q Severed?</p>	<p style="text-align: right;">Page 44</p> <p>1 Jackline Sarraf</p> <p>2 MR. STRAUSS: Objection again.</p> <p>3 She's not an attorney. She's not here</p> <p>4 to interpret this agreement.</p> <p>5 MR. SPORN: I'm not asking --</p> <p>6 MR. STRAUSS: She can ready it</p> <p>7 to you very plainly, which she just</p> <p>8 did.</p> <p>9 Q Okay. Do you agree with that?</p> <p>10 MR. STRAUSS: Objection.</p> <p>11 A I don't understand it, sir.</p> <p>12 Q You do not understand?</p> <p>13 A No, sir.</p> <p>14 MR. STRAUSS: Objection.</p> <p>15 Q Absent a written agreement</p> <p>16 between you and us, does that not connect</p> <p>17 with you in your understanding?</p> <p>18 A Just the last part between you</p> <p>19 and us I understand. The rest I don't</p> <p>20 understand the meaning of it, sir.</p> <p>21 Q Absent a written agreement, do</p> <p>22 you agree with that?</p> <p>23 MR. STRAUSS: Objection. She</p> <p>24 says she doesn't understand it. You</p> <p>25 are harassing the witness.</p>
<p style="text-align: right;">Page 43</p> <p>1 Jackline Sarraf</p> <p>2 A -- severed or waived absent a</p> <p>3 written agreement between you and us.</p> <p>4 Q Do you agree with that</p> <p>5 statement?</p> <p>6 MR. STRAUSS: Objection, vague,</p> <p>7 seeks a legal conclusion.</p> <p>8 Q You may answer.</p> <p>9 A I don't know what it means</p> <p>10 really.</p> <p>11 Q Well let's take a look at it.</p> <p>12 It says, no provision of this arbitration</p> <p>13 provision may be amended.</p> <p>14 Do you know what the word amend</p> <p>15 means?</p> <p>16 A Yes, sir, I do.</p> <p>17 Q Okay. Severed, to cut.</p> <p>18 A I know, I understand that word</p> <p>19 too.</p> <p>20 Q Or waived, to give up. Waiving</p> <p>21 means to give up.</p> <p>22 A Yeah, I know that too.</p> <p>23 Q And it says, absent a written</p> <p>24 agreement between you and us. Do you</p> <p>25 agree with that?</p>	<p style="text-align: right;">Page 45</p> <p>1 Jackline Sarraf</p> <p>2 MR. SPORN: I'm not harassing</p> <p>3 the witness.</p> <p>4 MR. STRAUSS: You are.</p> <p>5 Q Ms. Sarraf, I'm not trying to</p> <p>6 bug you or to get you discombobulated</p> <p>7 here. But do you agree with that --</p> <p>8 A Sir, I told you, the whole</p> <p>9 context, I don't understand what it means</p> <p>10 or what they mean by it.</p> <p>11 MR. STRAUSS: That's your</p> <p>12 answer.</p> <p>13 MR. SPORN: Okay.</p> <p>14 MR. STRAUSS: For the fifth</p> <p>15 time.</p> <p>16 MR. SPORN: Okay, okay.</p> <p>17 MR. STRAUSS: You have ten</p> <p>18 minutes.</p> <p>19 MR. SPORN: Okay.</p> <p>20 Let's take two minutes. I know</p> <p>21 it's counting, let's take two minutes,</p> <p>22 okay? We can make it shorter if you</p> <p>23 like.</p> <p>24 Do you need a break?</p> <p>25 THE WITNESS: No, I'm fine.</p>

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<p style="text-align: right;">Page 46</p> <p>1 Jackline Sarraf</p> <p>2 MR. SPORN: Okay, here we go.</p> <p>3 Q We have a new page. I'm</p> <p>4 introducing a document, which was provided</p> <p>5 to us, and this will be six.)</p> <p>6 (Whereupon a document was so</p> <p>7 marked as Plaintiff's Exhibit Six for</p> <p>8 identification.)</p> <p>9 Q Can you take a look at that</p> <p>10 page, the top, consumer account opening</p> <p>11 page introduction.</p> <p>12 A Yes.</p> <p>13 Q Does that look familiar to you?</p> <p>14 A It says what it says.</p> <p>15 Q No, no, does it look familiar to</p> <p>16 you? Have you ever seen this before?</p> <p>17 A No, sir.</p> <p>18 Q Is this something that Citibank</p> <p>19 would use would use for it's opening with</p> <p>20 a consumer?</p> <p>21 MR. STRAUSS: Objection to form,</p> <p>22 vague.</p> <p>23 A I don't know.</p> <p>24 Q Don't know, okay.</p> <p>25 Taking a look where it says</p>	<p style="text-align: right;">Page 48</p> <p>1 Jackline Sarraf</p> <p>2 accounts should, quote, accurately and</p> <p>3 clearly state a material information on</p> <p>4 terms, conditions, risks and costs to the</p> <p>5 consumer, do you agree with that?</p> <p>6 A Yes.</p> <p>7 Q And underneath it it says, if a</p> <p>8 disclosure is required to be read to the</p> <p>9 consumer, be sure to deliver it with an</p> <p>10 appropriate pace and provide clarity as</p> <p>11 necessary, do you agree with that?</p> <p>12 MR. STRAUSS: What's your --</p> <p>13 Q I'm asking from her background,</p> <p>14 from her training and her experience, do</p> <p>15 you agree with that?</p> <p>16 MR. STRAUSS: Agree with -- is</p> <p>17 that what it says or --</p> <p>18 Q No, it says what it says. I'm</p> <p>19 asking whether you agree with it.</p> <p>20 MR. STRAUSS: Objection, vague.</p> <p>21 I don't know what you're asking her.</p> <p>22 Q You can answer it.</p> <p>23 A No, I can't, because I don't</p> <p>24 know what you're asking really. You're</p> <p>25 asking me what the written thing is</p>
<p style="text-align: right;">Page 47</p> <p>1 Jackline Sarraf</p> <p>2 important information --</p> <p>3 A Okay.</p> <p>4 Q -- see where it goes down under</p> <p>5 paragraph three, there's a step one, two</p> <p>6 and three, you see where it is --</p> <p>7 A A-hum.</p> <p>8 Q -- going down the page?</p> <p>9 A A-hum.</p> <p>10 Q You see that?</p> <p>11 MR. STRAUSS: You're not on</p> <p>12 important information. You're doing</p> <p>13 the steps now? You first pointed her</p> <p>14 to the important information.</p> <p>15 MR. SPORN: Oh yeah.</p> <p>16 Q Go down below.</p> <p>17 A Okay.</p> <p>18 Q See where you're in step three?</p> <p>19 A Right.</p> <p>20 Q See where there's a bullet hole</p> <p>21 that says, review the products and</p> <p>22 services available?</p> <p>23 A Right.</p> <p>24 Q Was it your understanding that</p> <p>25 the CFA's or people signing up new</p>	<p style="text-align: right;">Page 49</p> <p>1 Jackline Sarraf</p> <p>2 correct or what the personal bankers would</p> <p>3 do?</p> <p>4 Q It says, if a disclosure is</p> <p>5 required to be read to the consumer. I'll</p> <p>6 stop there. Do you know what the word</p> <p>7 disclosure means?</p> <p>8 A Yes, sir, I do.</p> <p>9 Q What is your understanding of</p> <p>10 the term disclosure?</p> <p>11 A Disclosure means anything that</p> <p>12 pertains to the account opening or that</p> <p>13 relates to the account opening.</p> <p>14 Q And is that something that's an</p> <p>15 important item to the consumer?</p> <p>16 MR. STRAUSS: Objection.</p> <p>17 A Depending on the kind of account</p> <p>18 they open, we always give them the</p> <p>19 disclosures.</p> <p>20 Q The disclosures to what</p> <p>21 percentage they may be charged or what the</p> <p>22 deal is or the terms that they sign up</p> <p>23 for, isn't that something the CFA is</p> <p>24 supposed to go over with the consumer?</p> <p>25 MR. STRAUSS: Objection, vague.</p>

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<p style="text-align: right;">Page 50</p> <p>1 Jackline Sarraf</p> <p>2 A I'm not in the room to see what</p> <p>3 they go over with them or not.</p> <p>4 Q You are an assistant branch --</p> <p>5 A I was an assistant branch</p> <p>6 manager --</p> <p>7 MR. STRAUSS: Objection, she's</p> <p>8 not an assistant branch manager, Sam.</p> <p>9 Q I know now you're a teller.</p> <p>10 From your background and training, is that</p> <p>11 something that you would have expected the</p> <p>12 CFA to have discussed with the new</p> <p>13 customer?</p> <p>14 A Yes.</p> <p>15 Q And how about right underneath</p> <p>16 it, make representations that are clear,</p> <p>17 accurate and likely to be understood</p> <p>18 correctly. Do you agree with that?</p> <p>19 A Yes.</p> <p>20 Q Underneath, check with the</p> <p>21 consumer to insure they understand the</p> <p>22 information on -- information you have</p> <p>23 provided. Do you agree with that?</p> <p>24 A Yeah.</p> <p>25 MR. STRAUSS: Objection.</p>	<p style="text-align: right;">Page 52</p> <p>1 Jackline Sarraf</p> <p>2 numbers, it looks like we skipped one</p> <p>3 of the numbers, so we're asking you to</p> <p>4 re-number some of the middle to later</p> <p>5 ones so that they'll run</p> <p>6 consecutively, number one to six.</p> <p>7 Is that okay with you, Joe.</p> <p>8 MR. STRAUSS: That's fine.</p> <p>9 MR. SPORN: Thank you.</p> <p>10 [TIME NOTED: 12:00 p.m.]</p> <p>11 _____</p> <p>12 Jackline Sarraf</p> <p>13</p> <p>14</p> <p>15 _____</p> <p>16 Subscribed and sworn to</p> <p>17 before me this _____</p> <p>18 day of _____, 2014.</p> <p>19</p> <p>20 _____</p> <p>21 Notary Public</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 51</p> <p>1 Jackline Sarraf</p> <p>2 Q Respond to any questions the</p> <p>3 customer may have, do you agree with that?</p> <p>4 MR. STRAUSS: Objection.</p> <p>5 A I'm sure they ask all the</p> <p>6 questions necessary if they ask.</p> <p>7 Q No, that's not my question.</p> <p>8 Do you agree with that, that CFA</p> <p>9 should respond to any questions the</p> <p>10 consumer may have?</p> <p>11 MR. STRAUSS: She answered.</p> <p>12 A And I answered, sir. I said if</p> <p>13 they ask the questions, I'm sure they</p> <p>14 answer them.</p> <p>15 MR. STRAUSS: Asked and</p> <p>16 answered.</p> <p>17 MR. SPORN: Okay.</p> <p>18 (Pause in the proceedings.)</p> <p>19 MR. SPORN: Okay, thank you very</p> <p>20 much.</p> <p>21 THE WITNESS: You're more than</p> <p>22 welcome.</p> <p>23 MR. SPORN: Right on the button.</p> <p>24 MR. STRAUSS: Just made it.</p> <p>25 MR. SPORN: The consecutive</p>	<p style="text-align: right;">Page 53</p> <p>1</p> <p>2 I N D E X</p> <p>3</p> <p>4</p> <p>5 WITNESS EXAMINATION BY PAGE</p> <p>6 Jackline Sarraf Sporn 4</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 PLAINTIFF'S PAGE</p> <p>10 Exhibit 1 21</p> <p>11 Exhibit 2 24</p> <p>12 Exhibit 3 34</p> <p>13 Exhibit 4 37</p> <p>14 Exhibit 5 42</p> <p>15</p> <p>16 (Exhibits attached to transcript.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 2 CERTIFICATION 3 4 I, Rosanna A. Russell, a Notary Public 5 for and within the State of New York, do 6 hereby certify: 7 That the witness whose testimony as 8 herein set forth, was duly sworn by me; 9 and that the within transcript is a true 10 record of the testimony given by said 11 witness. 12 I further certify that I am not 13 related to any of the parties to this 14 action by blood or marriage, and that I am 15 in no way interested in the outcome of 16 this matter. 17 IN WITNESS WHEREOF, I have hereunto 18 set my hand this 17th day of January, 19 2014. 20 21 22 _____ 23 Rosanna A. Russell 24 * * * 25</p>	<p>Page 54</p>
<p>1 2 ERRATA SHEET 3 VERITEXT/NEW YORK REPORTING, LLC 4 CASE NAME: Hirsch -v- Citibank 5 DATE OF DEPOSITION: January 14, 2014 6 WITNESS' NAME: Jackline Sarraf 7 8 PAGE/LINE(S)/ CHANGE REASON 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 55</p>

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK BERTRAM HIRSCH and IGOR) ROMANOV, on behalf of) themselves and all others) similarly situated,)) Plaintiffs,)) VS.) Case No. 12-cv-1123(DAB)(JCL) CITIBANK, N.A.,)) Defendants.) _____) DEPOSITION OF: FAZRI ZUBAIR THURSDAY, JANUARY 9, 2014 10:00 A.M. Reported by: GINA M. CLOUD CSR No. 6315	3 APPEARANCES: (CONTINUED) ALSO FOR PLAINTIFF: (PRESENT VIA PHONE) SCHOENGOLD & SPORN, P.C. BY: SAMUEL SPORN, ESQ. Worldwide Plaza 393 W. 49th Street, #5HH New York, New York 10019 (212) 964-0046 ALSO PRESENT: SOSEH KEVORKIAN, Videographer
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	2 Deposition of FAZRI ZUBAIR, the witness, taken on behalf of the Plaintiffs, on Thursday, January 9, 2014, 10:00 A.M. at 2029 Century Park East, 16th Floor, Los Angeles, California 90067, before GINA M. CLOUD, CSR No. 6315, pursuant to NOTICE. APPEARANCES OF COUNSEL: FOR PLAINTIFFS: LAW OFFICES OF JAMES KELLY BY: JAMES KELLY, ESQ. 244 5th Avenue Suite K-278 New York, New York 10001 (212) 920-5042 Jkelly@jckellylaw.com FOR DEFENDANTS: STROOCK & STROOCK & LAVAN BY: SHANNON PONEK, ESQ. 2029 Century Park East 16th Floor Los Angeles, California 90067 Sponek@stroock.com	4 I N D E X WITNESS EXAMINATION PAGE FAZRI ZUBAIR (By Mr. Kelly) 6 E X H I B I T S NO. DESCRIPTION PAGE Exhibit 30 Concierge Daily 17 Transaction/Transmittal Report Exhibit 31 Client Manual Consumer 20 Accounts Including Privacy Notice, U.S. Markets Effective July 1, 2010 Exhibit 32 U.S. Constitution, 7th 22 Amendment Exhibit 33 New York Constitution, 22 Section 2, Trial By Jury Exhibit 34 Citibank National Form 26 Center, website printout Exhibit 35 Personal Banker Foundations 30 Participant Guide, North America Consumer

<p>5</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>7</p> <p>1 MS. PONEK: I'm in agreement also.</p> <p>2 THE VIDEOGRAPHER: At this time would</p> <p>3 counsel and all present please identify themselves</p> <p>4 for the record.</p> <p>5 MR. KELLY: I'm James Kelly, counsel for</p> <p>6 plaintiffs.</p> <p>7 MS. PONEK: Shannon Ponek, counsel for</p> <p>8 defendants.</p> <p>9</p> <p>10 FAZRI ZUBAIR,</p> <p>11 having been first duly sworn, was</p> <p>12 examined and testified as follows:</p> <p>13</p> <p>14 EXAMINATION</p> <p>15</p> <p>16 MR. SPORN: To the extent possible, can you</p> <p>17 keep your voices up so I can hear better.</p> <p>18 MR. KELLY: Okay. Were you able to hear</p> <p>19 that?</p> <p>20 MR. SPORN: I'm hearing you fine, yes.</p> <p>21 MR. KELLY: Also my co-counsel, Mr. Samuel</p> <p>22 Sporn, is joining us through conference call and</p> <p>23 he's in New York.</p> <p>24 Q. Good morning, Mr. Zubair, my name is James</p> <p>25 Kelly. I'll be taking your deposition today. We're</p>
<p>6</p> <p>1 LOS ANGELES, CALIFORNIA, THURSDAY, JANUARY 9</p> <p>2 10:00 A.M.</p> <p>3</p> <p>4</p> <p>5 THE VIDEOGRAPHER: Good morning. We are on</p> <p>6 the record at 9:59 a.m. on January 9, 2014. This is</p> <p>7 the video recorded deposition of Fazri Zubair. My</p> <p>8 name is Soseh Kevorkian here with our court reporter</p> <p>9 Gina Cloud. We're here from Veritext Legal</p> <p>10 Solutions at the request of counsel for plaintiff.</p> <p>11 This deposition is being held at 2029 Century Park</p> <p>12 East in Los Angeles, California. The caption of</p> <p>13 this case is Bertram Hirsch, et al. versus Citibank</p> <p>14 N.A, case number 12-cv-1124(DAB)(JCL).</p> <p>15 Please note that audio and video recording</p> <p>16 will take place unless all parties agree to go off</p> <p>17 the record. Microphones are sensitive and pick up</p> <p>18 whispers, private conversations and all cellular</p> <p>19 interference. I'm not authorized to administer an</p> <p>20 oath, I'm not related to any party in this action,</p> <p>21 nor am I financially interested in the outcome in</p> <p>22 any way.</p> <p>23 May I please have an agreement from all</p> <p>24 parties that we can proceed.</p> <p>25 MR. KELLY: I'm in agreement.</p>	<p>8</p> <p>1 going to go about 45 minutes of questioning, we'll</p> <p>2 try and take a break, but if you need a break before</p> <p>3 that, let me know and we'll take a break.</p> <p>4 Citibank's attorney will be objecting a lot today to</p> <p>5 many of my questions, but you're still obligated to</p> <p>6 answer the question and we'll deal with the</p> <p>7 objections later.</p> <p>8 So can you state your name and address for</p> <p>9 the record?</p> <p>10 A. Yes, name is Fazri Zubair, address is 11806</p> <p>11 Venice Boulevard, apartment 206, Mar Vista,</p> <p>12 California.</p> <p>13 Q. Can you state when you started working at</p> <p>14 Citibank?</p> <p>15 A. Approximately 2009.</p> <p>16 Q. When you started there, what did you do,</p> <p>17 what were your duties?</p> <p>18 A. I was a personal banker, so I opened new</p> <p>19 accounts.</p> <p>20 Q. Are you still working with Citibank?</p> <p>21 A. I am not.</p> <p>22 Q. What happened, why did you leave?</p> <p>23 A. I wanted to make a change in career.</p> <p>24 Q. What are you doing now?</p> <p>25 A. Software engineer for a game studio.</p>

<p style="text-align: right;">9</p> <p>1 Q. Can you state your date of birth for the 2 record? 3 A. [REDACTED] 4 Q. Have you ever been deposed before? 5 A. No. 6 Q. Can you state your education beginning with 7 high school? 8 A. Sure, I graduated Torrance High School. I 9 attended Cal Poly Pomona but did not finish with a 10 degree. 11 Q. Where is Torrance High School? 12 A. City of Torrance in L.A., L.A. County. 13 Q. Were you born and raised in L.A.? 14 A. No, I was born in Dubai. 15 Q. When did you come to the U.S.? 16 A. When I was one. 17 Q. Where did you live? 18 A. Torrance. 19 Q. Did you have any prior business experience 20 before coming to Citibank in 2009? 21 A. Yes. 22 Q. Can you detail that? 23 A. Yes, I worked at Academic Learning Company, 24 as business rep. Went to Best Rate Funding as sales, 25 Lending Group as sales, and then I think it was</p>	<p style="text-align: right;">11</p> <p>1 does that mean? 2 A. Whenever we open new accounts, whether it be 3 business accounts or personal accounts, we're 4 required to provide clients with a certain set of 5 documents. They hammered into us these documents 6 that we must provide. It was an ongoing process, 7 including continuing education through Citibank every 8 few months, so new accounts will be created, there 9 will be new disclosures that need to be provided and 10 they would educate us on when and how to provide them 11 and where we could print them out if need be. 12 Q. Do you have any professional degrees? 13 A. No. 14 Q. Do you remember meeting with the plaintiff 15 in this lawsuit, Igor Romanov? 16 A. I do not. 17 Q. Do you recall what documents you were 18 required to provide to customers when they open up a 19 savings or checking account? 20 A. I recall some of the documents, but the main 21 ones that were always ingrained was we had a client 22 manual, a marketplace addendum, and then any 23 printouts that were updates to them. There was also 24 a new account kit that prints out when we open up an 25 account that gives an overview of what the client</p>
<p style="text-align: right;">10</p> <p>1 Citibank right after that. 2 Q. And you started off as a personal banker 3 right away? 4 A. Correct. 5 Q. When you came to Citibank, did you have 6 training? 7 A. Yes. 8 Q. What was the training? 9 A. It was a course called Personal Banker 10 Foundations. It was an offsite, one-week or two-week 11 course. 12 Q. Did you provide any detail on the type of 13 training that was provided at the Personal Banker 14 Foundations course? 15 A. That was several years back, I can't really 16 remember much. 17 Q. Can you remember anything from it? 18 A. If I could go just briefly what we covered, 19 basically processes and regulations that govern new 20 account opening, how we would proceed with clients, a 21 lot of hammering in documentation and quality 22 control. That was a big focus from them, the 23 foundations classes. That's about it that I can 24 remember. 25 Q. The documentation and quality control, what</p>	<p style="text-align: right;">12</p> <p>1 just did. 2 Q. A new account kit? 3 A. Yes. 4 Q. What is that? 5 A. Whenever we would open an account, it would 6 print out some pages from the computer that said, "Hi 7 Mr. Client, you opened up this account, this is how 8 much you deposited, this is your account number." 9 They call it a new account kit. 10 Q. Can you go through the process when you 11 open up an account, a new checking or savings 12 account, the exact steps that you typically take? 13 A. From what point? 14 Q. From when you sit down with the client. 15 A. Client comes in, we sit down. We identify 16 what solution they need. At that point we verify who 17 they are. If they're an existing client, we use one 18 of the existing forms of identity checking that we 19 have available, pin number, I.D. card. If they're a 20 new client, two forms of I.D. or a form of I.D., 21 depending, and then we go into a new account opening 22 procedure, we input the information into the 23 computer. At that point we confirm the information 24 with the client, we print out the documentation, we 25 have welcome kits that we pre make for ourselves.</p>

<p style="text-align: right;">13</p> <p>1 These welcome kits are a folder. They have marketing 2 material, client manual, marketplace addendum, any 3 printouts that we might need. At the point of new 4 account opening, we double-check the National Forms 5 Center because a lot of times new disclosures might 6 come up during the week and we try to pre make the 7 kits at the beginning of the week to save us time 8 during the process. If there is anything new, print 9 them out, add it to the folder, we hand it to the 10 client. They review the documents. 11 At that point we bring out the signature 12 card, we have them sign the signature card, they're 13 confirming that they received the kit from us, 14 they're acknowledging that they're opening the 15 account, and I think there's some other stuff on 16 there they're acknowledging, since I don't remember 17 because it's been a while. Take the card back and 18 the client has the new account. 19 BY MR. KELLY: 20 Q. Do you actually take the documents out of 21 the kit and go through the documents with the 22 client? 23 A. Depending on the client. 24 Q. Depending on what? 25 A. The amount of questions they have. Usually</p>	<p style="text-align: right;">15</p> <p>1 Q. Do you know what the term "arbitration" 2 means? 3 A. Yes. 4 Q. Can you explain what you believe that 5 means? 6 A. Basically it's what we're doing right now, 7 basically taking deposition outside of court, 8 agreeing to settle outside of a client -- what do you 9 call it, jury trial. That's my best definition. 10 Q. Are you aware that the client manual 11 contains a provision that allows Citibank to take 12 any disputes to arbitration with a customer? 13 A. Yes. 14 Q. Do you explain that provision to customers 15 when they open up their account? 16 A. Not unless they specifically ask me. 17 Q. Has a customer ever specifically asked 18 about the arbitration clause? 19 A. Yes. 20 Q. What did they ask? 21 A. They asked if they could cross out the 22 arbitration clause and still open the account. 23 Q. Was this one instance? 24 A. One instance. I just thought it was 25 particularly funny is why I remember it.</p>
<p style="text-align: right;">14</p> <p>1 the kit is an open folder. 2 Q. And the kit is provided to them before they 3 sign the signature card? 4 A. Yes. 5 Q. Is that how you were trained to open up a 6 new account? 7 A. I can't recall if I was specifically trained 8 how to do that, but to me it made sense as part of 9 the process. We review everything first before they 10 sign. 11 Q. If a customer does not have any questions, 12 do you go through the client manual and review it 13 with them? 14 A. The client manual specifically or the whole 15 welcome kit? 16 Q. All the documents. 17 A. I'll go through all the documents with the 18 client and tell them this is the client manual, this 19 is the marketplace addendum. If we have any 20 promotions going on, they're usually in the welcome 21 kit, I'll go over that with the client. 22 Q. Do you actually go through each provision, 23 do you go through important provisions of the client 24 manual with them? 25 A. Not unless they ask.</p>	<p style="text-align: right;">16</p> <p>1 Q. What was your response? 2 A. I said unfortunately we cannot do that. 3 Q. Is that all? 4 A. That's the only instance that comes to mind. 5 Q. Were there any other questions besides 6 crossing it out? 7 A. Possibly. It was an interesting client. 8 Q. You said trial by jury. Do you know what 9 that means? 10 A. Yes. 11 Q. Can you explain what you think that means? 12 A. That means it's a court trial where a jury 13 is selected and they make the decision on whether the 14 plaintiff -- the person being accused is guilty or 15 innocent. 16 Q. Do you notify customers that the client 17 manual contains an arbitration provision that does 18 away with their right to trial by jury? 19 A. Not specifically. 20 Q. Do you know about the Citibank promotional 21 offer that's the subject of this lawsuit? 22 A. Vaguely. It's been several years. 23 Q. What do you know about it? 24 A. That we were offering American Airline 25 miles. That's about it.</p>

<p style="text-align: right;">17</p> <p>1 Q. Do you have a lot of customers come in to 2 sign up for promotional offers like that? 3 A. Yes, those were popular offers. 4 Q. Is there any difference between the sales 5 process for a client that comes in with the 6 promotional offer, as opposed to one who hasn't come 7 in with a promotional offer? 8 A. No. 9 Q. Has there ever been an instance where one 10 of the documents that was required to be provided to 11 a customer in the kit wasn't available or the branch 12 ran out of them so you could not provide one to the 13 customer? 14 A. Not to my knowledge. 15 MR. KELLY: I would like to introduce as 16 Plaintiff's Exhibit 30 a document Bates stamped 17 CITI-0000077 through CITI-0000078 titled Concierge 18 Daily Transaction/Transmittal Report. 19 (The document referred to was marked 20 by the reporter as Exhibit 1 for identification 21 and is attached hereto). 22 BY MR. KELLY: 23 Q. Can you take a look at this document? 24 A. Uh-huh. 25 Q. Do you recognize it?</p>	<p style="text-align: right;">19</p> <p>1 Q. And then right after that it says "referred 2 by," and it's a little difficult to read. I think 3 it says Kuntheachhora? 4 A. Yes. 5 Q. Do you know who that was? 6 A. That was a teller working at the branch at 7 the time. 8 Q. Can you spell that name? 9 A. No, we called him a nickname because his 10 name was hard to pronounce. I can't remember what it 11 was. 12 Q. It looks like K-u-n-t-h-e-a-c-h-o-r-a, it 13 looks like. 14 MS. PONEK: Yes. Or possibly an "n" at the 15 end, but I'm not sure. 16 MR. KELLY: Could be an "n." 17 Q. On the next page, the signature card, what 18 do you explain to customers when they sign the 19 signature card? 20 A. I don't understand, I'm sorry. What do you 21 mean exactly? 22 Q. What do you tell customers when you present 23 them with the signature card for signature? 24 A. It's been several years, I don't remember 25 what I said verbatim. If I was still at Citi I would</p>
<p style="text-align: right;">18</p> <p>1 A. Yes. 2 Q. What is this document? 3 A. The first page is the report that prints out 4 at the end of the day that shows all our concierge 5 transactions. Second document is the signature card 6 we have the client sign, or a copy of that. 7 Q. On the first page at the top it says "CFA 8 name." Do you see that? 9 A. Yes. 10 Q. Do you know what CFA stands for? 11 A. Client Financial Analyst. 12 Q. Do you know what that means? 13 MS. PONEK: Objection, vague. 14 THE WITNESS: I don't understand what you 15 mean. I know what each word means. I don't 16 understand. 17 BY MR. KELLY: 18 Q. Is that something that you need to have a 19 license for to get that designation? 20 A. You do not need a license, as far as I'm 21 aware. 22 Q. And then it has right under it CFAP with a 23 number symbol. Do you know what that number symbol 24 is? 25 A. It's my employee identification number.</p>	<p style="text-align: right;">20</p> <p>1 probably be saying this five times a day, but 2 basically it would be a general overview of what this 3 card means, what you're signing towards. I probably 4 reviewed the main text that's on the document, asked 5 them if they have any questions about the new account 6 before we officially open it. 7 MR. KELLY: I would like to introduce as 8 Plaintiff's Exhibit 31 a document Bates stamped 9 CITI-0000155 through CITI-0000183. 10 (The document referred to was marked 11 by the reporter as Exhibit 31 for identification 12 and is attached hereto). 13 BY MR. KELLY: 14 Q. It's actually titled "Client Manual 15 Consumer Accounts Including Privacy Notice, U.S. 16 Markets Effective July 1, 2010." 17 Do you recognize this document, Mr. Zubair? 18 A. I do. 19 Q. Can you state what it is? 20 A. It's the client manual. 21 Q. This is the document that you provide to 22 customers when they open up a savings or a checking 23 account? 24 A. Correct. 25 Q. And this is included in the customer kit,</p>

<p>21</p> <p>1 is it called?</p> <p>2 A. Yes.</p> <p>3 Q. Do you take this out of the custom kit and</p> <p>4 go through with the customer?</p> <p>5 MS. PONEK: Objection, asked and answered.</p> <p>6 THE WITNESS: It depends on what context</p> <p>7 you mean go through. I do not go through individual</p> <p>8 line by line item on this document with the</p> <p>9 customer. I do show the customer the document and</p> <p>10 tell them that this is where they can find</p> <p>11 information about their account.</p> <p>12 BY MR. KELLY:</p> <p>13 Q. Can we go to page Bates stamp 177, the top</p> <p>14 paragraph there states: "This section contains</p> <p>15 important information regarding your deposit, ready</p> <p>16 credit, checking plus or checking plus (variable</p> <p>17 rate) accounts and the services related thereto. It</p> <p>18 provides that either you or we can require that any</p> <p>19 disputes be resolved by binding arbitration.</p> <p>20 Arbitration replaces the right to go to court,</p> <p>21 including the right to participate in a class action</p> <p>22 or similar proceeding. In arbitration the dispute</p> <p>23 is submitted to a neutral party and arbitrator</p> <p>24 instead of a judge or jury."</p> <p>25 Do you see that paragraph that I just read,</p>	<p>23</p> <p>1 (The document referred to was marked</p> <p>2 by the reporter as Exhibit 33 for identification</p> <p>3 and is attached hereto)</p> <p>4 BY MR. KELLY:</p> <p>5 Q. Can you take a look at these two documents,</p> <p>6 Mr. Zubair. Do you know what the 7th Amendment is</p> <p>7 of the U.S. Constitution?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. It's the right to --</p> <p>11 MS. PONEK: Objection, same thing, it's</p> <p>12 calling for a legal conclusion.</p> <p>13 THE WITNESS: It's the right to have a</p> <p>14 trial by jury.</p> <p>15 BY MR. KELLY:</p> <p>16 Q. And the other page, the New York</p> <p>17 Constitution, section 2, is that similar, right to</p> <p>18 trial by jury?</p> <p>19 A. I've never seen this before, but according</p> <p>20 to this document.</p> <p>21 Q. Would you agree that the client manual, the</p> <p>22 arbitration provision contained therein, if that did</p> <p>23 away with the constitutional right to a client</p> <p>24 having a trial by jury with respect to lawsuits and</p> <p>25 disputes, do you think that would be an important</p>
<p>22</p> <p>1 Mr. Zubair?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Do you agree that this arbitration</p> <p>4 provision allows Citibank to elect to have disputes</p> <p>5 arbitrated and do away with the right to trial by</p> <p>6 jury?</p> <p>7 MS. PONEK: Objection, calls for a legal</p> <p>8 conclusion, he's not here to testify about what the</p> <p>9 provision does and does not do.</p> <p>10 BY MR. KELLY:</p> <p>11 Q. I understand, you can answer the question.</p> <p>12 A. I'm not a legal expert, I cannot make a call</p> <p>13 on that.</p> <p>14 Q. So you're not aware that this arbitration</p> <p>15 provision does away, allows Citibank to do away with</p> <p>16 a right to trial by jury?</p> <p>17 MS. PONEK: Objection, asked and answered.</p> <p>18 MR. KELLY: I would like to introduce</p> <p>19 Exhibit 32 and 33. 32 is U.S. Constitution, 7th</p> <p>20 Amendment.</p> <p>21 (The document referred to was marked</p> <p>22 by the reporter as Exhibit 32 for identification</p> <p>23 and is attached hereto)</p> <p>24 MR. KELLY: And 33 is the New York</p> <p>25 Constitution, Section 2, Trial By Jury.</p>	<p>24</p> <p>1 fact to disclose to a customer?</p> <p>2 MS. PONEK: Again, objection, you're asking</p> <p>3 for his legal conclusion.</p> <p>4 THE WITNESS: Again, I'm not a legal expert</p> <p>5 of any type.</p> <p>6 BY MR. KELLY:</p> <p>7 Q. It's not a legal statement I'm asking for.</p> <p>8 If the constitution provided a right to trial by</p> <p>9 jury and provide a document to a customer that does</p> <p>10 away with that right, and it's on the back of that</p> <p>11 long document, do you think that would be important</p> <p>12 to point that out to a customer before they sign the</p> <p>13 signature card agreeing to this document?</p> <p>14 A. If you're asking for my opinion, if I</p> <p>15 personally think that would be important?</p> <p>16 MS. PONEK: Again, objection, he's not here</p> <p>17 to give a legal opinion.</p> <p>18 MR. KELLY: I'm not asking for a legal</p> <p>19 opinion.</p> <p>20 BY MR. KELLY:</p> <p>21 Q. I'm asking for your personal opinion.</p> <p>22 A. I guess I'm a little confused on the</p> <p>23 questioning at the moment.</p> <p>24 Q. It's a yes or no.</p> <p>25 MS. PONEK: He doesn't understand the</p>

<p>25</p> <p>1 question. Maybe you can rephrase it.</p> <p>2 MR. KELLY: Can you read him the question.</p> <p>3 (Record read)</p> <p>4 MS. PONEK: Same objection.</p> <p>5 THE WITNESS: It's hard for me to just give</p> <p>6 a yes or no on that.</p> <p>7 BY MR. KELLY:</p> <p>8 Q. If you opened an account at a bank or a</p> <p>9 company and they put in the back of a long document</p> <p>10 a provision taking away your right, your</p> <p>11 constitutional right to something, don't you think</p> <p>12 that's important for them to point you out?</p> <p>13 A. Yes, but I usually read the documents</p> <p>14 provided before I do anything.</p> <p>15 Q. You read the document provided?</p> <p>16 A. Yes.</p> <p>17 Q. What do you read?</p> <p>18 A. If I've got a client manual, I would read</p> <p>19 the client manual. I would go through it. I would</p> <p>20 ask questions, I would ask if there's anything</p> <p>21 important I should know about it. So me personally,</p> <p>22 that's what I would do.</p> <p>23 Q. Oh, you personally. About how long do you</p> <p>24 sit with a customer when they open up an account?</p> <p>25 A. It could vary between an hour to I've spent</p>	<p>27</p> <p>1 A. Looks like it is the start of the process.</p> <p>2 Q. Do you follow all these steps when you open</p> <p>3 an account?</p> <p>4 A. Best of my knowledge, when I was at Citibank</p> <p>5 I followed all these steps.</p> <p>6 Q. Did you introduce -- strike that.</p> <p>7 Who is the manager at the branch that you</p> <p>8 worked at, the Citibank branch?</p> <p>9 MS. PONEK: Objection, vague as to time.</p> <p>10 BY MR. KELLY:</p> <p>11 Q. While you were there, and if there was more</p> <p>12 than one?</p> <p>13 A. I don't think there was. This was the</p> <p>14 Marina Del Rey branch. Sorry, I can't remember.</p> <p>15 Q. You don't remember your manager?</p> <p>16 A. No, she was not the last manager I had</p> <p>17 there.</p> <p>18 Q. Do you remember any manager name there?</p> <p>19 A. The last manager I had before I quit was</p> <p>20 Shuhaila.</p> <p>21 Q. Shuhaila. Do you know how to spell that?</p> <p>22 A. No, S-h -- no.</p> <p>23 Q. Is that her first name?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know her last name?</p>
<p>26</p> <p>1 half a day before.</p> <p>2 MR. KELLY: Let me introduce this as</p> <p>3 Exhibit 34, a document Bates stamped CITI-0000133</p> <p>4 through CITI-0000139 titled Citibank National Form</p> <p>5 Center.</p> <p>6 (The document referred to was marked</p> <p>7 by the reporter as Exhibit 34 for identification</p> <p>8 and is attached hereto)</p> <p>9 BY MR. KELLY:</p> <p>10 Q. Do you recognize this document, Mr. Zubair?</p> <p>11 A. Yes, I'm used to seeing it as a website.</p> <p>12 Q. Can you explain for the record what it is?</p> <p>13 A. This would be the site we would go to to get</p> <p>14 updated forms.</p> <p>15 Q. Do you recognize some of these pages in</p> <p>16 here, I guess these forms?</p> <p>17 A. Vaguely. It's been several years.</p> <p>18 Q. When did you leave Citibank?</p> <p>19 A. About a year and a half ago.</p> <p>20 Q. Do you recognize this on page 135, the</p> <p>21 Bates stamp, and it says at the top "Consumer</p> <p>22 Account Opening, Stage 1 Introduction"?</p> <p>23 A. Vaguely.</p> <p>24 Q. Are these the steps in here that you have</p> <p>25 to follow to open up an account?</p>	<p>28</p> <p>1 A. Started with an "N," Nobahar, but I'm not</p> <p>2 sure.</p> <p>3 Q. At the end of the client account opening</p> <p>4 process, did you ever introduce the customer to the</p> <p>5 branch manager?</p> <p>6 A. Yes.</p> <p>7 Q. Did you do that at every account opening</p> <p>8 process that you went through?</p> <p>9 A. Any account opening process where they were</p> <p>10 available.</p> <p>11 Q. Have you ever had any complaints from any</p> <p>12 customers that you didn't provide any of the</p> <p>13 required documents of disclosures?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. How do you know that you've provided the</p> <p>16 customer each of the required documents or</p> <p>17 disclosures when they opened up an account? Do you</p> <p>18 keep check of, is it like a checklist that you keep</p> <p>19 or is there any kind of document that you indicate</p> <p>20 that you did this, you took the step?</p> <p>21 MS. PONEK: Objection, compound.</p> <p>22 THE WITNESS: As I stated earlier, National</p> <p>23 Forms Center and my procedures for opening up a new</p> <p>24 account on the National Form Center, I vaguely</p> <p>25 remember, there is a new account opening section</p>

<p style="text-align: right;">29</p> <p>1 that tells me what consumer account or business</p> <p>2 account disclosures must be provided at account</p> <p>3 opening. That would be my visual checklist.</p> <p>4 BY MR. KELLY:</p> <p>5 Q. Has anybody asked you for a statement,</p> <p>6 anybody at Citibank, asked you for a statement as to</p> <p>7 whether or not you provided the client manual to</p> <p>8 Igor Romanov?</p> <p>9 MS. PONEK: Objection, don't answer the</p> <p>10 question to the extent it calls for attorney/client</p> <p>11 privilege information. So if it's something you</p> <p>12 discussed with me or one of the other attorneys,</p> <p>13 then don't answer, but if you can answer it without</p> <p>14 providing attorney/client information, then go</p> <p>15 ahead.</p> <p>16 BY MR. KELLY:</p> <p>17 Q. As long as they weren't an attorney. Has</p> <p>18 any non attorneys asked you to provide a statement?</p> <p>19 A. No.</p> <p>20 Q. Do you know Joan Haslam, H-a-s-l-a-m?</p> <p>21 A. (No audible response)</p> <p>22 Q. Do you know Nancy Lewis?</p> <p>23 A. No.</p> <p>24 Q. Has there ever been a time where you missed</p> <p>25 a step in an account opening process?</p>	<p style="text-align: right;">31</p> <p>1 out when we open up a new account.</p> <p>2 Q. What do you do with that document?</p> <p>3 A. Provide it to the client in their new</p> <p>4 account package.</p> <p>5 Q. That's included in the account package?</p> <p>6 A. I included it, yes.</p> <p>7 Q. The new account package?</p> <p>8 A. What I would give to the client.</p> <p>9 Q. Do you do that with every client, is that</p> <p>10 the step you take with every client?</p> <p>11 A. Yes.</p> <p>12 MR. KELLY: Let's take a ten-minute break</p> <p>13 and we'll wrap up.</p> <p>14 THE VIDEOGRAPHER: We're going off the</p> <p>15 record at 10:42 a.m.</p> <p>16 (Recess taken)</p> <p>17 THE VIDEOGRAPHER: We're going back on the</p> <p>18 record at 10:52 a.m.</p> <p>19 BY MR. KELLY:</p> <p>20 Q. Besides the signature card that the</p> <p>21 customers sign, are there any other documents that</p> <p>22 you're aware of that could show that the customer</p> <p>23 received the client manual?</p> <p>24 A. It would probably just be the signature</p> <p>25 card.</p>
<p style="text-align: right;">30</p> <p>1 A. Not that I'm aware of.</p> <p>2 MR. KELLY: I would like to introduce as</p> <p>3 Plaintiff's Exhibit 35 a document Bates stamped</p> <p>4 CITI-0000119 through CITI-0000132 titled</p> <p>5 "Personal Banker Foundations Participant Guide,</p> <p>6 North America Consumer."</p> <p>7 (The document referred to was marked</p> <p>8 by the reporter as Exhibit 35 for identification</p> <p>9 and is attached hereto).</p> <p>10 BY MR. KELLY:</p> <p>11 Q. Do you recognize that document, Mr. Zubair?</p> <p>12 A. Vaguely.</p> <p>13 Q. How do you recognize it?</p> <p>14 A. From the cover.</p> <p>15 Q. When have you seen it before?</p> <p>16 A. Personal Banker Foundations Training and I</p> <p>17 think I had a copy in my desk at the bank.</p> <p>18 Q. If you could turn to Bates stamp 123. Do</p> <p>19 you see that document there, it says "Customer Care</p> <p>20 Checklist"?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Do you recognize that?</p> <p>23 A. Yes.</p> <p>24 Q. Can you say what that is?</p> <p>25 A. It's a Customer Care Checklist that prints</p>	<p style="text-align: right;">32</p> <p>1 MR. KELLY: I think we're done, thank you</p> <p>2 very much, Mr. Zubair.</p> <p>3 MS. PONEK: What have you guys been doing</p> <p>4 in other depositions about signing -- should we go</p> <p>5 off the record and then put an agreement on the</p> <p>6 record?</p> <p>7 MR. KELLY: We've been using the standard</p> <p>8 federal stipulation.</p> <p>9 MS. PONEK: Normally we waive the court</p> <p>10 reporter's obligation to hold on to the original</p> <p>11 transcript and you would hold onto it and then give</p> <p>12 the witness 30 days after receipt to read and sign</p> <p>13 it.</p> <p>14 MR. KELLY: Okay.</p> <p>15 MS. PONEK: Is that not typical in New</p> <p>16 York?</p> <p>17 MR. KELLY: That's fine.</p> <p>18 MS. PONEK: So I think we're in agreement</p> <p>19 to that, thank you.</p> <p>20 THE VIDEOGRAPHER: We're off the record at</p> <p>21 10:54 a.m. This concludes today's testimony given by</p> <p>22 Fazri Zubair. The total number of media used was</p> <p>23 one and will be retained by Veritext LLC.</p> <p>24 (The deposition was concluded at 10:55 a.m.)</p> <p>25</p>

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 BERTRAM HIRSCH and IGOR
4 ROMANOV, on behalf of
5 themselves and all others
6 similarly situated,

Plaintiffs,

v.

12 Civ. 1124 (DAB)

7 CITIBANK, N.A.,

8 Defendant.
9 -----x

10 February 19, 2014
11 10:30 a.m.

Before:

12 HON. DEBORAH A. BATTS,

13 District Judge

14 APPEARANCES

15 THE LAW OFFICES OF JAMES C. KELLY

16 Attorneys for plaintiffs

17 BY: JAMES C. KELLY

18 - and -

SCHOENGOLD & SPORN, P.C.

19 BY: SAMUEL P. SPORN

20 STROOCK, STROOCK & LAVAN, LLP

21 Attorneys for defendant

22 BY: JOSEPH E. STRAUSS

23 JULIA B. STRICKLAND
24
25

1 (Case called)

2 THE COURT: Are the plaintiffs ready?

3 MR. KELLY: Yes, your Honor.

4 MR. SPORN: Plaintiffs are ready.

5 THE COURT: Good morning, Mr. Kelly. Good morning,
6 Mr. Sporn.

7 MR. SPORN: Good morning.

8 THE COURT: And on behalf of Citibank we have
9 Ms. Strickland and Mr. Strauss as well as Christine Giaquinto.
10 Good morning to all of you.

11 MS. STRICKLAND: Good morning, your Honor. It is nice
12 to see you.

13 THE COURT: In this weather I'm so happy we were able
14 to provide a somewhat precipitationless day for you to come.
15 I'm not guaranteeing it is going to stay that way, however.

16 MS. STRICKLAND: Your Honor, I think at the last
17 hearing I had suggested that perhaps this hearing should be
18 held in California and I think there was some enthusiasm about
19 that idea.

20 THE COURT: I think it was unanimous but we didn't do
21 anything about it, did we.

22 Now, I understand from discussions that you have had
23 with Mr. Delaney, my deputy clerk, that you are feeling that it
24 will be more efficient to stipulate to the designated parts of
25 the depositions rather than have a reading of the record and

1 giving me an opportunity to ask questions on specific things?

2 MS. STRICKLAND: I believe that's the case, your
3 Honor. And we have actually filed with the Court to make the
4 Court's life hopefully somewhat easier --

5 THE COURT: Color-coded.

6 MS. STRICKLAND: -- color-coded transcripts.

7 THE COURT: Yes. I was very pleased to see that.

8 MS. STRICKLAND: And all together in one binder so
9 that each transcript has our colors and theirs so you don't
10 have to flip back and forth.

11 THE COURT: I do appreciate that and I think that what
12 probably makes the most sense in terms of efficient use of your
13 time is that I reserve the right to recall you for questions
14 and arguments on specific things once I have reviewed all of
15 the transcripts. And I would do that at a time that is
16 mutually convenient for all but I do agree that there may be a
17 few areas where I have need for further inquiry or argument
18 from you.

19 So, let me just make sure I understand we are
20 stipulating to the record as it is based on the hearing the
21 last time, based on the submissions of the parties, and I just
22 have one question; we are in agreement that New York Law
23 applies here to Mr. Hirsch and that California law applies to
24 Mr. Romanov?

25 MS. STRICKLAND: That is correct, your Honor.

MR. SPORN: Yes.

MS. STRICKLAND: With the overlay, of course, of federal law.

THE COURT: Oh that.

MS. STRICKLAND: Oh that.

MR. SPORN: Yes. Of course.

THE COURT: Well, then what I will do is release you and thank you for appearing today ready to do it the hard way and hopefully the next thing you hear from me will be the determination as opposed to a need to get together again. Unfortunately you are very pleasant people, I might force a need to get together again, but I will try and restrain myself.

Under those circumstances, I think that we can adjourn conditionally at this point unless you have anything further you wish to put on the record.

MR. KELLY: Yes, your Honor. I do have some further information that I would like to put on the record.

THE COURT: Fine.

MR. KELLY: Can I speak?

THE COURT: Sure.

MR. KELLY: Your Honor, I just want to take some time now that plaintiffs have had more time to review the arguments and cases cited by Citibank in support of its presumption of receipt argument, if I may?

Although New York Law has established a presumption

1 that a party has received documents when mailed to the parties'
2 address in accordance with regular office procedures, the
3 presumption of receipt rule or the common law mail box rule
4 only applies to mailings.

5 THE COURT: No, no. I appreciate that. And I think
6 that the defendants appreciate that too. This isn't a mailings
7 case.

8 MR. SPORN: Not the hand-delivery of documents from
9 person to person. The idea is that a properly addressed piece
10 of mail placed in the care of the postal service or other mail
11 delivery services is presumed to have been delivered and upon
12 research it appears that this doctrine has been around since at
13 least 1938 but this Court has recently and specifically held
14 that the presumption of receipt relates to mailings only, not
15 the hand delivery of a document. That case is *SEC v. Espuelas*,
16 905 F.Supp.2d 507 at page 522, Judge Engelmayer. I just found
17 this case, your Honor. It is not cited in plaintiff's
18 prehearing brief, it is a 2012 decision, and I think that this
19 finding disposes of Citibank's presumption of receipt argument
20 because this is not a mailing situation.

21 Going on, all the cases that Citibank cites are all
22 mailing cases. Concerning a single document in the mailing and
23 testimony swearing to the policy along with some other
24 contemporaneous evidence such as receipt from Federal Express
25 or computer registries showing the mailings went out to the

1 specific customer address. Moreover, the actual mailings are
2 the very --

3 THE COURT: But, I think you have got a slam dunk on
4 the mailings issue, okay? Do you have anything else?

5 MR. SPORN: Well, just in case your Honor wants to
6 apply this to where it has never been applied before there is
7 also a distinction with mailing and presuming receipt. Those
8 cases typically only apply to providing notice, not to forming
9 an agreement. And there is a case that explains the
10 distinction in great detail, this is *Alvarez v. Coca-Cola*
11 *Refreshment U.S.A., Inc.*, 914 F.Supp.2d 256 at pages 258
12 through 259. It is an Eastern District of New York 2012 case
13 but provides good explanation of that distinction. And there
14 is various other notice cases that show that you need more, you
15 need some kind of Federal Express receipt, some kind of
16 contemporaneous evidence to show that the actual issue was
17 provided.

18 There is another Second Circuit case, *Manigault v.*
19 *Macy's*, 318 F. App'x 6, 7, page 7 through 8, which is also
20 instructive on this notice first forming an agreement
21 distinction. There the Second Circuit applied the presumption
22 of receipt doctrine to a mailing of an arbitration agreement
23 containing an opt-out provision to an employee. The Court
24 found, based on all the testimony, that it was mailed, you
25 cannot opt out, but then the Court went further to determine

1 whether they agreed to arbitrate. There was another step,
2 there is more that is required, and the Court found that that
3 employee there continued to work, had notice of the agreement
4 and was an estoppel argument, you benefitted from the account
5 so we are going to find that you are bound to this agreement.

6 If your Honor may give me one more second?

7 THE COURT: You have as much time as you need,
8 Mr. Kelly.

9 MR. KELLY: Citibank has not provided any
10 contemporaneous evidence looking through the record. There is
11 a couple cases here, *Coach Inc. v. Horizon Trading U.S.A.*, 908
12 F.Supp.2d 426 at page 432 to invoke the presumption a party
13 must first produce evidence of mailing. In that case the Court
14 found that Coach had done so in the form of the Fed Ex delivery
15 receipt listing an address given by Chan himself. I don't
16 think that you can apply this in a face-to-face transaction.
17 The reason why they allow it in mailing is typically besides
18 mere denial of receipt the recipient could say, hey, this is
19 not my address, that was not my address, I did not live there
20 at the time. There is usually something more to provide. In
21 face to face it is a sworn testimony that I provided against
22 the sworn testimony that I never received it. I think your
23 Honor has to go and look at the credibility if you want to
24 apply the presumption in a non-mailing situation.

25 Another case, *Meckel v. Continental Resources Company*,

1 758 F.2d 811 (2d Cir. 1985), it is also a notice case. There
2 was proof of a mass mailing. It was notice of redemption to
3 debt holders' proof. Lots of proof of a mass mailing, 70
4 percent of the holders converted the debt to stock meaning they
5 received this notice and the Court found the plaintiff did not
6 contend that its name or address on the computer registry that
7 was shown that it was mailed to was not accurate. That's the
8 major case that is relied on by Citibank.

9 There is just a couple more points I wanted to
10 highlight to your Honor.

11 Here this is not a mass mailing situation or a notice
12 case. There is no evidence whatsoever that plaintiffs actually
13 received the mail at issue. Indeed, Citibank cannot decide
14 what version of alleged client manual was provided to
15 plaintiffs. Citibank first stated the client manual dated
16 January 2010 was provided to plaintiffs and changed its mind
17 and now it states that a version dated July 2010 was provided
18 to plaintiffs. Further, in her declaration in support of
19 Citibank's motion to compel arbitration, Joan Haslam stated
20 that California customers are provided the marketplace addendum
21 but said nothing with respect to New York customers.

22 Now Citibank contends that New York customers also
23 provided this marketplace addendum. Citibank's story is
24 constantly changing as we go along here. Amazingly, Citibank
25 now introduced a personal bank or foundation training document

1 stating that the client manual and marketplace addendum must be
2 explained and provided to the customer. This step is
3 conspicuously highlighted in a bracketed box and the customer
4 check list contained in that trading document, however this
5 document, again, your Honor, states on its face that it was
6 amended in March 2013.

7 Does Citibank amend this document to put in this
8 additional step of providing and explaining the client manual
9 and marketplace addendum to customers? Plaintiffs believe so
10 because they have requested disclosure as to what the
11 amendments were and Citibank has not provided any and remain
12 silent on what the amendments were.

13 Further, the other policies and procedures providing
14 step-by-step instructions on the opening of the accounts which
15 is on Citibank's national form center for Citibank bankers to
16 pull up, nowhere states anywhere therein the word "client
17 manual" or "marketplace addendum" and makes general statements
18 to make all material disclosures to the client. Although
19 Citibank allegedly had this check list for each customer no
20 such check list was produced and another rep, Vivian Safir, has
21 claimed the check lists are destroyed and it should be noted
22 that one of Citibank's reps Michael Ashley that opened up
23 Plaintiff's Hirsch account worked there for 20 years, never
24 recalled seeing the check list. Vivian Safir did not recall if
25 the check list was in place two years ago but she said she

1 definitely said it was in place a year ago.

2 Just like Citibank has amended its client manual to
3 state on its face it is in agreement in connection with the
4 lawsuit, plaintiffs believe that without any disclosure as to
5 the amendment in the personal banker foundation document,
6 Citibank also amended that document to include a step that the
7 client manual marketplace addendum must be provided and
8 explained to customers.

9 And just a couple more points.

10 Even if the Court were to believe Citibank here, the
11 testimony shows that the client manual was never explained to
12 customers to be an agreement with the bank or contained any
13 terms of conditions. The testimony also shows that the client
14 manual was never reviewed with Citibank customers. The alleged
15 policy was never followed. Tellingly, Nancy Lewis, Citibank's
16 30(b)6 deponent and personal responsible for Citibank's
17 policies and procedures, stated in her deposition that Citibank
18 personnel are not required to review the client manual with
19 customers. That's at page 16, line 10 through 16; direct
20 conflict with this customer care check list that Citibank now
21 introduces.

22 And just a couple more points, your Honor. There were
23 a couple cases that said mere denial of receipt and mailing is
24 okay where there is no personal recollection of providing the
25 document. The case there is *Cabobianco v. Sandow Media Corp.*,

1 2012 U.S. District Lexis 1433378 through 12, 2012, Westlaw,
2 4561761.

3 And your Honor, just real quick to close up with
4 respect to the inquiry notice argument, even if the presumption
5 of receipt applies and plaintiffs have not overcome this
6 presumption, plaintiffs and indeed all Citibank customers
7 including the proposed class members are not bound by the terms
8 and the conditions in the manual as it does not state on its
9 face as it is an agreement.

10 The Second Circuit found that it doesn't state on its
11 face its agreement. The Second Circuit further found that
12 although Citibank has provided declaration and according to
13 which its practices and procedures provide the client manual to
14 new customers opening deposit accounts, there is no evidence to
15 indicate whether new customers are alerted to the fact that the
16 accounts are governed by the terms and conditions included in
17 the client manual or that the client manual contains an
18 arbitration clause.

19 And, your Honor, even after all the discovery since
20 this Second Circuit's findings here, if you look carefully
21 through all the testimony, not one Citibank representative has
22 testified that they have said to a customer that the client
23 manual is in agreement or that the document contains terms and
24 conditions. And all of the other banks out there for major
25 banks such as Chase, Signature Bank, Bank of America, you can

1 do a search on Google with the bank and their account
2 agreement, you will see on the face of their account agreement
3 that states this is an agreement with the bank, it contains
4 important terms and conditions governing your account. I have
5 a couple of the agreements right there but it is easily
6 accessible on Google.

7 And just wrapping up here, further evidence came out
8 that the client manual and marketplace addendum is not this 8
9 and 1/2 by 11 document. It is more 11 inches by 4 inches.
10 There was testimony by Michael Ashley it is very small, it does
11 not look like that. Vivian Safir, oh, that's the client manual
12 but that's not what it looks like. It is a small document as
13 we showed your Honor last time and to slip it into this welcome
14 kit that Citibank alleges is provided to its customers which
15 plaintiff said they had never even seen the welcome kit further
16 hides this agreement from the customers and further goes to
17 plaintiff's unconscionability argument.

18 And just a quick -- and this is all with respect to
19 Citibank's argument about Hirsch is a lawyer and litigated
20 cases including before the Supreme Court and that Romanov is
21 educated and has his own businesses and that they should be
22 asking *Are there any other written agreements that we should*
23 *know of?* Citibank provides no case requiring a consumer with
24 some type of education or sophistication to ask in a consumer
25 transaction, face-to-face, whether there are any written

1 agreements. It can't be law. It sets up a he-said-she-said
2 argument. Can you imagine -- you would probably do a hundred
3 consumers -- yourself, your Honor, as a lawyer, should you be
4 charged with asking and scouring every single document, Are
5 there any other written agreements? Or if you are a business
6 man? It just can't be a rule, your Honor.

7 I think that's all, your Honor. Thank you very much.

8 THE COURT: Thank you, Mr. Kelly.

9 MR. SPORN: Just one thing, your Honor? A little
10 housekeeping, if I may? I would like to hand in a law review
11 article for your perusal and I am giving a copy to defendants
12 which is an article which I think has bearing that might be
13 useful which --

14 MR. STRAUSS: Was it cited in his brief?

15 MR. SPORN: No, it is not, because of the time factor
16 because of our very short period when we got it late Friday
17 morning to come to Court but I would like to give it in to
18 the --

19 THE COURT: What is it? What is the title?

20 MR. SPORN: This is the article by Jean Sternlight who
21 is a Professor of Law at University of Nevada Law School who is
22 pre-eminent in arbitration and spoken and conferred and it is
23 called: Mandatory Binding Arbitration and the Demise of the
24 Seventh Amendment Right to a Jury Trial.

25 THE COURT: When was this written?

MR. SPORN: This was written in 2001.

THE COURT: You can put the citation on the record.

In terms of whether or not I'm going to take a look at it, if I do I will also invite the defendants to cite, for the Court's reference, law review articles that they think are helpful.

MR. SPORN: Okay.

THE COURT: Okay?

MR. SPORN: Just for the record, it is 16, Ohio State, J. Disposition and Resolution, 669 et seq 2001.

THE COURT: Thank you.

MR. SPORN: So, I will hand it up. Thank you so much.

THE COURT: Did you give a copy to defense?

MR. SPORN: I gave a copy to defense.

THE COURT: And you are free to inform the Court of law review articles, maybe I will even let you do two law review articles that you think are helpful.

MR. STRAUSS: Thank you, your Honor.

MR. SPORN: Another housekeeping matter.

In the various depositions that you now have the with the yellow and green and so forth --

THE COURT: No one asked me what my favorite color was. I will point out, however, I will deal with what I was given.

MR. SPORN: Well, I defer to --

THE COURT: No, no. That's fine.

1 MR. SPORN: Being as it may, we have made many
2 questions to each of the witnesses regarding the Federal
3 Constitution, the jury trial, the Seventh Amendment of New York
4 State. I don't think that's been marked into evidence. Of
5 course your Honor can take judicial notice of that. It may
6 have been annexed as part of some of the depositions but should
7 your Honor want a copy of the Seventh under New York State, I'm
8 happy to hand it in.

9 THE COURT: The seventh?

10 MR. SPORN: The Seventh Amendment, the jury trial that
11 is guaranteed to people in civil trials.

12 THE COURT: I think I can find it if I need to.

13 MR. SPORN: I am sure your Honor would but I just
14 mentioned it because we kind of overlooked it in the previous
15 session we had but I just meant as a housekeeping measure.

16 THE COURT: Thank you.

17 MR. SPORN: Thank you.

18 THE COURT: Ms. Strickland?

19 MS. STRICKLAND: Yes, your Honor.

20 Just for the record, these aren't marked in my
21 favorite colors.

22 THE COURT: All right. Then no exception taken.

23 MS. STRICKLAND: We decided we would go with the ones
24 that were visible as opposed to our personal preferences but in
25 any way, thank you very much, your Honor.

1 Before I begin with some comments, to the extent that
2 plaintiffs reference non-evidentiary materials in their closing
3 remarks and this would include agreements entered into --

4 THE COURT: By other banks.

5 MS. STRICKLAND: -- by other banks by way of example,
6 as well as potentially the current version of the Citibank
7 agreement which is not at all relevant to this case --

8 THE COURT: That's certainly a position that you have
9 taken.

10 MS. STRICKLAND: Right, as well as changes in the
11 check list, we would object to any of that being, frankly,
12 researched or considered in any respect in coming to a
13 conclusion here.

14 Let me just start by saying that --

15 THE COURT: I think that the more important question
16 is whether the materials that had been provided actually are
17 materials that were extant at the time that these accounts were
18 open because if there are subsequent versions it is not helpful
19 to know that this, indeed, was what was supplied to either the
20 individuals who opened the accounts for the plaintiffs or to
21 the plaintiffs themselves. But, versions or dated versions are
22 relevant whether or not the fact that things have been changed.
23 I have not made a determination whether that is relevant but I
24 will say that it would be more relevant if, indeed, the
25 particular document in an exhibit is actually a document that

1 was in existence and used by the Bank at the time that the
2 accounts were opened. I disagree that versions don't matter.

3 MS. STRICKLAND: Your Honor, our position is really
4 the following, which is: We think the case should focus on the
5 versions that were available at the time that the plaintiffs
6 opened their accounts.

7 THE COURT: Oh, I agree with that.

8 MS. STRICKLAND: And were made available to them, and
9 other versions are not relevant to disposition of the case.

10 I will say that with respect to the version of the
11 client manual, this is really much ado about nothing. There
12 were supplemental interrogatory responses served. This isn't a
13 contradiction, it is that the person who actually pulled up the
14 version at Citibank and signed the declaration realized that
15 there was a then more current version which is the one that
16 would have been supplied to plaintiffs. The fact of the matter
17 is when you look at it, it is basically an identical version
18 but it was corrected as soon as the mistake was identified and
19 this just has to do with how the materials are maintained at
20 Citibank because they're maintained in a more -- warehouse
21 isn't really the right word but in a way in which they are
22 kept, date by date versions, and she just pulled up the wrong
23 version. It was a completely innocent error. It is not
24 contradictory, there is nothing nefarious, and the versions
25 aren't frankly different as relevant to this case in any event.

1 There are some fee changes or something not relevant here. So,
2 like I said, it is a bit of a tempest in a teapot.

3 In any event, just to summarize which I will do in a
4 not probably so concise way but let me take a whack at it: As
5 is clear, it is Citibank's position that the evidence that's
6 been put before the Court both during the course of our hearing
7 as well as in these deposition transcripts that have now been
8 submitted to the Court and the exhibits that have been marked
9 in connection with the hearing indisputably demonstrates that
10 Citibank's corporate policy and practice was and is to provide
11 the client manual to all customers who open an account at a
12 Citibank branch. The evidence also is that this policy was
13 consistently followed by Citibank's personal bankers including
14 the bankers who actually opened the plaintiff's accounts. This
15 undisputed evidence of Citibank's policy and practice
16 establishes a presumption that plaintiffs received the client
17 manual when they opened their accounts.

18 Now, Mr. Kelly just got up and said, oh, all those
19 cases about the mail box rule don't actually apply here. Well,
20 the Second Circuit does not agree with Mr. Kelly and in fact
21 the Second Circuit, in its order in this case -- so not only is
22 it Second Circuit binding authority but it is also the law of
23 the case -- directed that the standard to be applied was the
24 standard -- and they gave an example in *Ma v. Merrill Lynch* and
25 the Court said that: This Court should consider whether

1 Citibank fulfilled its burden of proof in demonstrating a
2 corporate policy regarding the provision of the client manual
3 citing Ma which is a mailing case. But, the Court obviously
4 relied on that and by so doing dictated that that was the
5 standard to be applied. And Court there cited Ma and saying --
6 this is the quote from Ma, "A presumption of receipt arises
7 where the record establishes office procedures followed in the
8 regular course of business."

9 So, we are here bound to the standard established by
10 the Second Circuit in this case.

11 In addition, the argument that the mail box or the
12 mailing cases don't apply defies, at some level, common sense.
13 I mean when a plaintiff comes in as the plaintiffs have here
14 and denies receipt, there has got to be a standard under the
15 law for rebutting that and the Second Circuit has told us that
16 that standard is the corporate policy and practice standard.

17 It is our view, and we believe that the Court will be
18 persuaded upon a review of the evidence, that the overwhelming
19 evidence establishes a presumption of receipt which defeats
20 plaintiff's claim that they never received the client manual.
21 Additionally, the evidence that's been put forward indisputably
22 demonstrates that each of the plaintiffs was on inquiry notice
23 and indeed probably actual notice but the test here, we would
24 submit, is probably inquiry notice regarding the existence and
25 terms of the client manual.

1 We would also submit that the repeated failure to
2 inquire is evidence that plaintiffs in fact had the client
3 manual all along. But, the rule in consumer transactions is
4 that a person is not absolved from contractual obligations
5 where a reasonably prudent person would have known of the
6 existence of the agreement but failed to make any inquiry.

7 Here plaintiffs were repeatedly notified that their
8 accounts were subject to terms and conditions and that the
9 client manual is the document that contains those terms and
10 conditions. The client manual itself clearly states it is an
11 agreement. That is in the very first paragraph of the client
12 manual. Nothing more would need to be known to know that it is
13 an agreement and in fact Mr. Hirsch was very clear that even
14 though he denied receipt and said he never reads things or he
15 only reads things partially, he actually testified that he
16 assumed his account was governed by an agreement. He was very
17 clear on that. And he said it both in his deposition and he
18 said it before your Honor in live testimony.

19 He did testify that even though he is an accomplished
20 lawyer he only partially reviews important documents. But,
21 even a partial review would have made clear to him that there
22 was an agreement governing his account.

23 Let me just summarize very quickly the evidence as to
24 Citibank's policies and procedures because it is clear and
25 overwhelming.

1 At their depositions every single one of Citibank's
2 witnesses -- and again here in Court with Mr. Lota who
3 testified live -- testified that Citibank's personal bankers
4 are required to provide the client manual to customers when
5 accounts are opened. Citibank's 30(b)6 witness Nancy Lewis
6 testified that pursuant to Citibank's required practice and
7 procedure the client manual is provided to customers when they
8 open a deposit account. And this policy is required at every
9 single Citibank branch in the United States.

10 George Lotto, the branch manager of the Great branch
11 when Mr. Hirsch opened his account and in fact still is but
12 certainly at that time, testified here in court that pursuant
13 to Citibank's policy and practice, Citibank's personal bankers
14 place the client manual into a folder right in front of the
15 customer and the folder is then given to the customer. He
16 testified that this policy is a must. This is something we
17 have to do he said. He also testified that at the evening
18 wrap-ups with the personal bankers he confirms with the
19 personal bankers that the client manual was provided to each
20 customer who opened an account that day.

21 Furthermore, he stated that in the evening wrap-up he
22 asked Michael Ashley who actually was the personal banker who
23 opened the Hirsch account, whether he provided a welcome kit to
24 Mr. Hirsch and the response was yes.

25 Mr. Lotto testified that he has never heard of a

1 client manual not being provided to a customer at his branch,
2 the Great Neck branch, in his nine years as branch manager.
3 This is a strong track record and this is a practice and
4 requirement so routine that it was inconceivable to him that it
5 had not been done and, indeed, there is no contrary evidence in
6 the record.

7 In addition to Mr. Lotto and Ms. Lewis, Citibank's
8 personal bankers who actually opened the Hirsch and Romanov
9 accounts testified that they always followed Citibank's policy
10 and practice.

11 Michael Ashley who opened Mr. Hirsch's was adamant
12 that he provided the client manual to all customers as -- and
13 he termed it as part of his due diligence. He has been in
14 banking for almost a quarter of a century and actually you will
15 see this in the transcripts was quite offended by the
16 suggestion that he failed to complete this basic requirement
17 when he opened Mr. Hirsch' account.

18 Fazri Zubair, who opened Mr. Romanov's account,
19 testified that it is engrained in personal bankers that the
20 client manual must be provided and that he, too, always
21 provided the client manual to his customers. And then Vivian
22 Safir who plaintiffs called, she is a personal banker at the
23 Great Neck branch, testified that she gives the client manual
24 to all customers and that is Citibank's policy that every time
25 an account is opened they have to give the customer a client

1 manual. Even Jacqueline Sarraf, who plaintiffs called although
2 unclear what her involvement in the case is but she does work
3 at Great Neck branch, testified that she knows the client
4 manual is given to customers as well.

5 There simply is no reasonable dispute that Citibank
6 has established its policy that requires a provision of the
7 client manual to customers. Contrary to plaintiff's
8 suggestion, evidence of actual receipt by plaintiffs is not the
9 standard. There is no requirement that Citibank proved
10 anything other than a presumption of receipt and this is very
11 clear from the Second Circuit's order. All that is required
12 per the Second Circuit is proof of Citibank's regular policy
13 and practice. Even if actual receipt were required to be
14 approved, plaintiff's signature cards constitute evidence of
15 receipt.

16 Mr. Lotto testified that customers sign the signature
17 card and receive the client manual as part of the same process,
18 a process that begins and ends with the customer sitting with
19 the personal banker while the account is being opened. Your
20 Honor inquired during Mr. Lotto's testimony as to whether
21 customers sign the signature cards before or after they
22 received the client manual. The testimony will show, and
23 Mr. Lotto testified, that delivery of the manual and the
24 signing of the signature card are really part of the same
25 process.

1 THE COURT: Actually, I think it says that after they
2 have signed the signature card the last thing that happens is
3 they get the welcome package.

4 MS. STRICKLAND: Right, but all while sitting there
5 during the course of this account opening process.

6 Mr. Lotto testified that customers can review and ask
7 questions about the client manual both before and after the
8 signature card is signed and that's at page 53 of his
9 testimony. So, it is not like the customers only hear about an
10 agreement after they sign the signature card and, in fact, the
11 signature card references an agreement so there are no
12 surprises that there is an agreement governing the account.

13 THE COURT: No, there is a surprise, though.
14 Ms. Strickland, what agreement have they seen or have discussed
15 before they say that they agree to it?

16 MS. STRICKLAND: Well, there is an agreement that is
17 part of the package that is in front of them which has been the
18 testimony, it is part of the welcome kit, and this really goes
19 to the inquiry notice point which is there is an agreement
20 reference, Mr. Hirsch himself testified that he knew an
21 agreement would govern this account and it is certainly no
22 surprise that there is an agreement governing your bank account
23 and in fact the customers take advantage of that agreement all
24 the time, they look to it for terms and provisions in the same
25 way that the bank does. In fact, Mr. Zubair, who opened

1 Mr. Romanov's accounts, testified at his deposition that he
2 provided the manual before the signature card was signed.
3 Again, part of the same process, perhaps a different order in
4 that instance but, again, part of the same process while the
5 customer is sitting there before the customer leaves the desk.

6 There also is no requirement that Mr. Ashley or
7 Mr. Zubair actually recall opening the accounts of the
8 plaintiffs. Their testimony confirms that they always followed
9 Citibank's policy and practice and Mr. Lotto was clear in his
10 testimony that he is not aware of any instance in which the
11 client manual was not provided.

12 Plaintiffs have again argued that the customer care
13 check list is somehow dispositive here. The check list is
14 actually additional proof of the policy and practice. That
15 check list, contrary to what Mr. Kelly characterized it as
16 during his closing remarks, is simply a reference for the
17 personal bankers who choose to use it. It merely reinforces
18 the policy. There is nothing in the record that suggests it is
19 anything other than that and, in fact, Ms. Lewis testified at
20 page 27, the question was:

21 Is that something all personal bankers must use when
22 opening an account?

23 And the answer was: No.

24 "Q How was this used, this document?

25 "A It can be used as a training tool for new personal bankers.

1 They use it mainly to remind them to order checks or order a
2 debit."

3 And so, again, a bit of much ado about nothing. The
4 check list is a reminder, it is not required to be used in
5 every instance. I am guessing at some point that this becomes
6 part of the mental process of anyone that opens an account,
7 they know what is on the check list on the personal banker
8 side.

9 As I said, it really is meant to just reinforce the
10 policy. In fact, Mr. Lotto testified that the check list was
11 in effect in October 2010 when the Hirsch account was opened
12 and at the end of the day wrap ups he would review it to make
13 sure that the required steps had been followed as just a sort
14 of check list, check off the box. Right?

15 During the course of the argument before as well as
16 during the testimony plaintiffs seemed to assert that because
17 Mr. Hirsch allegedly received a separate privacy notice that
18 must be proof he never received the client manual.

19 Obviously Mr. Hirsch could have received both the
20 client manual and a privacy notice. Plaintiffs have also
21 suggested somehow -- and they suggest this in their brief, that
22 Citibank misled the Second Circuit on this issue. That
23 assertion is baseless. The declaration filed by Mr. Hirsch in
24 this case merely states that he received Citibank's privacy
25 notice. It didn't attach any documents and we pointed out in

1 response that the client manual contains a privacy notice so
2 perhaps he received the client manual as well notwithstanding
3 his denial.

4 Plaintiff's argument that the client manual was not
5 provided in the original pamphlet form also, again, a bit of
6 much ado about nothing. We explained this at the prior
7 hearing. Citibank provided an exact copy from its microfiche
8 records of the client manual provided when plaintiffs opened
9 their accounts. The fact that it was not provided to this
10 Court in the pamphlet form as compared to an exact copy is not
11 probative of anything.

12 In any event, by plaintiff's argument unclear by their
13 argument whether the form of it, whether it is folded over or
14 printed from microfiche is irrelevant. They say their clients
15 never saw it in any event but, again, much ado about nothing.
16 We have provided it in a true and correct copy from microfiche.

17 Simply put, the proof of a corporate policy regarding
18 the provision of the client manual required by the Second
19 Circuit establishes a presumption of receipt. The denials of
20 receipt here are simply not credible on the record. As to
21 Mr. Hirsch, he has changed his testimony in the case. When
22 your Honor has the opportunity to review the transcripts from
23 the deposition as compared to his hearing testimony that will
24 be quite apparent. At his deposition Mr. Hirsch testified that
25 he did review certain Citibank documents including the Citi

1 Products Opened/Applied for Today document because it was the
2 critical document for him. He didn't say he partially read it,
3 he said he read it. Yet, in court he claimed he only read the
4 first two thirds of that document conveniently stopping short
5 of where it explicitly refers to the client manual. How
6 convenient.

7 Similarly, at his deposition, he testified that he
8 read his first account statement because he wanted to make sure
9 it was exactly as he thought it ought to be. He didn't say he
10 partially read it, he said he read it. But, in court he
11 claimed he actually stopped reading it just before the words
12 "Account Terms and Conditions." Again, how convenient.

13 In any event, whether partially reviewing critical
14 documents actually helps his case, the change in testimony
15 conveniently to always stop reading just before the language
16 relevant here is telling. There are additional examples of
17 inconsistency. At his deposition he testified that he has
18 homes in both Great Neck and Floral Park. In court he said I
19 have only a home in Great Neck and an office in Floral Park.
20 And he also testified that he can't avoid getting some little
21 bits of documents in Great Neck where he lives and his wife
22 likes to keep everything clean in the way of paper, yet he is
23 supposedly certain he never received a client manual and it
24 wasn't thrown away at some point with some other paper. By the
25 way, as an aside, something my husband would accuse me of

1 doing, it is the neatnik wife syndrome.

2 At his deposition Mr. Hirsch also claimed that he
3 never received an account agreement governing any of his three
4 other bank accounts with other banks other than Citi in October
5 of 2010. None. Not a single one of those banks ever gave him
6 an account agreement. That just defies credibility. Yet, at
7 the same time he then said, in Court after his deposition where
8 he said he never received anything, Well, no, no. Maybe he
9 actually received something from Capital One. That, of course,
10 didn't come up at his deposition. Then he testified at his
11 deposition he never received an agreement from Capital One.
12 So, some inconsistencies.

13 Given his inconsistencies and the absolutely clear
14 testimony from Citibank's representatives as to their practice
15 and policy, the evidence on Citibank's behalf clearly outweighs
16 his testimony.

17 We also note that there have been some issues with
18 respect to the document productions by Mr. Hirsch. The
19 complaint in the case attaches an airline miles offer dated
20 October 6 of 2010 that was supposedly addressed to him but this
21 document was never produced by Mr. Hirsch in this case in
22 response to Citibank's document request. Plaintiffs produced,
23 in response to those document requests, a different offer which
24 is Exhibit M to our pre-hearing brief. So, it appears there
25 must have been documents in Mr. Hirsch's files when the

1 complaint was filed that either aren't there anymore or have
2 simply not been produced. What else has not been produced?
3 Perhaps the client manual?

4 Mr. Romanov's denial of receipt also lacks
5 credibility. Mr. Romanov admitted in his deposition receiving
6 what he vaguely described as a receipt that he shoved in his
7 pocket but no such receipt has been produced in the case.

8 At his deposition Mr. Romanov admitted on the record
9 that he did not even search his files in response to Citibank's
10 document request. In fact, plaintiffs failed to produce any
11 documents whatsoever from Mr. Romanov in response to Citibank's
12 document request. Plaintiffs inexplicably neither produced nor
13 even described the document that Mr. Romanov admits he received
14 from Citibank when he opened the accounts so we can't know what
15 Mr. Romanov received and what is in his files. Again, his
16 statements lack credibility.

17 Citibank has plainly established a presumption that
18 the client manual was received and plaintiffs have failed to
19 rebut that presumption. Moreover, pursuant to the
20 preponderance of the evidence standard, plaintiffs more likely
21 than not received the client manual.

22 With respect to inquiry notice, it is clear that both
23 plaintiffs were repeatedly notified of the existence of the
24 client manual and that their accounts are governed by terms and
25 conditions yet they made no effort to inquire. Again,

1 Mr. Hirsch attempts to explain it all away by changing his
2 testimony. He originally testified that he read the Citi
3 Products Opened document as I mentioned but yet now has decided
4 that he stopped two thirds of the way through, the same with
5 respect to the account statement.

6 As a matter of law in any event, failure to read a
7 document is no excuse. Mr. Hirsch was unquestionably notified
8 as a matter of actual and inquiry notice of the existence of
9 the client manual on multiple occasions as the record shows
10 including the signature card, the Citi Products Opening
11 document and the account statement as well as the offering
12 document that started this case which says it is governed by
13 applicable terms and conditions -- again a matter of inquiry
14 notice.

15 Plaintiff Romanov didn't testify here so we live with
16 his testimony at deposition where he says he never inquired
17 despite receiving the signature card and the account statement
18 and presumably the offering materials.

19 With respect to the account opening card we have
20 talked about that a bit, it specifically references agreements
21 governing any account opened. Well, if that's the case, which
22 it is, wouldn't it have been reasonable for plaintiffs,
23 particularly Mr. Hirsch, a seasoned lawyer and Mr. Romanov as
24 well an experienced business man in financial matters, to
25 inquire as to whether the accounts were in fact governed by an

1 agreement and, if so, where is that agreement or what does it
2 look like?

3 This is particularly the case as to Mr. Hirsch who
4 testified he knows that bank accounts are governed by an
5 agreement. His testimony that he didn't need to ask about the
6 agreement -- that was his testimony -- does not absolve him
7 from the agreement. He just said he didn't need to ask about
8 it. He said I don't need to inquire. That does not change the
9 fact that he was on inquiry notice.

10 There is no case law decision that we have been able
11 to identify that supports a finding that Mr. Hirsch is not
12 bound by the agreement because even though he knows the bank
13 accounts are governed by agreements, he didn't need to inquire,
14 in his own opinion.

15 A review of the documents themselves further confirms
16 that customers including Mr. Hirsch or Romanov are alerted to
17 the fact that the agreement governs the deposit account. We
18 discussed the account opening process. The testimony is that
19 the account manual and existence of the client manual is
20 discussed at the time of the of opening the accounts. The
21 testimony is clear that pursuant to Citibank's policy that
22 client manual is shown and delivered to customers and they're
23 told this contains what you need to know. The fact that they
24 don't go through it line by line or page by page is not
25 determinative; the testimony is uniform that it is provided.

1 The testimony also from the Citibank witnesses is that
2 if customers have any questions about the client manual, the
3 personal bankers are available to answer those questions either
4 if they themselves know the answer or they will call the
5 appropriate people including the legal department if that needs
6 to be done.

7 Additionally, as I noted earlier, the first paragraph
8 of text of the client manual states that it is an agreement.
9 The case law does not absolve customers from reviewing the
10 contents of a document that states it is an agreement.

11 Further, the airline miles promotions explicitly state
12 that all accounts are subject to approval and applicable to all
13 terms and conditions, again, further providing inquiry notice.

14 With that said, we have submitted briefing. We are
15 obviously available to your Honor if you would like to ask
16 further questions either in person or through additional
17 briefing but we would submit, your Honor, that the evidence is
18 clear here that Citibank has satisfied its burden to
19 demonstrate the existence of a valid arbitration agreement
20 either through proof of delivery or inquiry notice, either one
21 of which in the alternative is proof of the existence of the
22 agreement.

23 We thank you, and thank you for your time and patience
24 during these proceedings. We appreciate it.

25 THE COURT: Well, thank you, all. Please see Pam on

1 ordering this on a daily basis and splitting the costs between
2 the parties.

3 You will be hearing from me.

4 MS. STRICKLAND: Thank you very much, your Honor.

5 MR. SPORN: Thank you, your Honor.

6 THE COURT: This matter is adjourned.

7 o0o

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
::
BERTRAM HIRSCH and IGOR ROMANOV, on :
behalf of themselves and all others similarly situated, :
Case No. 12 Civ. 1124 (DAB)
Plaintiffs, :
:
vs. :
:
NOTICE OF APPEAL
CITIBANK, N.A., :
:
Defendant. :
----- X

NOTICE IS HEREBY GIVEN that Citibank, N.A., defendant in the above-named case, by and through its undersigned attorneys, hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum and Order entered in this action on the 10th day of June, 2014 (the “June 10, 2014 Order”). A copy of the June 10, 2014 Order is attached at Exhibit A.

The other parties to the June 10, 2014 Order and the names and addresses of their respective attorneys of record are as follows:

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Dated: New York, New York
July 9, 2014

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EXHIBIT A

Exhibit A -- Memorandum and Order, dated June 10, 2014
[See pp. SA 17 - SA 63]